UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

)	
IN RE PHARMACEUTICAL INDUSTRY)	MDL No. 1456
AVERAGE WHOLESALE PRICE)	
LITIGATION)	Civil Action No.
)	01-CV-12257-PBS
)	
THIS DOCUMENT RELATES TO)	
)	
)	Judge Patti B. Saris
State of Montana v. Abbott Labs., Inc., et al..)	
02-CV-12084-PBS)	
)	
State of Nevada v. Abbott Labs., Inc., et al..)	
D. Nev. Cause No. CV-12086-PBS (Nevada II))	
)	

DECLARATION OF ANDREW D. SCHAU

ANDREW D. SCHAU, declares as follows:

1.   I am a member of the law firm of Patterson Belknap Webb & Tyler LLP,

attorneys for Johnson & Johnson, Centocor, Inc., Janssen Pharmaceutica Products L.P., McNeil-

PPC, Inc., and Ortho Biotech Products, L.P. (the "J&J Defendants"). I submit this declaration in

support of the J&J Defendants' Individual Motion for Summary Judgment Against the States of

Nevada and Montana.

2.   Attached hereto are true and correct copies of the following exhibits:

Designation	Description
Exhibit 1	Excerpts from Montana Second Amended Complaint, ¶ 489, ¶¶ 83-89, Exhibit A, August 1, 2003
Exhibit 2	Excerpts from Nevada Amended Complaint, ¶ 310, ¶¶ 56-59, Exhibit A, August 1, 2003
Exhibit 3	Excerpts from Deposition of Raymond S. Hartman, August 22, 2006 Vol. 1, 31:9 – 32:21

Designation	Description
Exhibit 4	Redacted Declaration of Raymond S. Hartman (Nevada) ¶¶ 21-22, 33, June 13, 2006
Exhibit 5	Redacted Declaration of Raymond S. Hartman (Montana), ¶¶ 20-21, 32, Tables 1, 2, and 6, June 13, 2006
Exhibit 6	MDL Trial Declaration of Jayson S. Dukes, November 16, 2006
Exhibit 7	Redacted Supplementary Declaration of Raymond S. Hartman ("Hartman Supp. Nevada Declaration"), Tables 1 and 4, June 20, 2006

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 8, 2007   /s/ Andrew D. Schau
                                           Andrew D. Schau

2

EXHIBIT 1

UNITED STATES DISTRICT COURT FOR

THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	MDL No. 1456
	CIVIL ACTION: 01-CV-12257-PBS
	Judge Patti B. Saris
THIS DOCUMENT RELATES TO:	
State of Montana v. Abbott Labs., Inc., et al., D. Mont. Cause No. CV-02-09-H-DWM	

STATE OF MONTANA'S SECOND AMENDED COMPLAINT

(FILED UNDER SEAL)

1534.15 0025 BSC.DOC

13.   Immunex

80.   Defendant Immunex Corporation ("Immunex"), a wholly owned subsidiary of Defendant Amgen, Inc., is a Washington corporation with its principal place of business at 51 University Street, Seattle, Washington. Immunex is a company that develops products for the treatment of cancer, asthma, rheumatoid arthritis, inflammatory diseases, infectious diseases, and cardiovascular diseases. In 1999, its total revenues were $542 million.

81.   Defendant Immunex has been a wholly owned subsidiary of Defendant Amgen, since Immunex' acquisition in July 2002.

82.   Immunex manufactures several drugs reimbursed by the Montana Medicaid Program and which are purchased by citizens of the State of Montana.

14.   The Johnson & Johnson Group (J&J, Centocor, Janssen, McNeil, Ortho)

83.   Defendant Johnson & Johnson ("J&J") is a New Jersey corporation with its principal place of business located at One Johnson & Johnson Plaza, New Brunswick, New Jersey. In 2001, pharmaceutical sales represented 45% of J&J's worldwide sales and 19% of its operational growth.

84.   Defendant Centocor, Inc. ("Centocor") is a Pennsylvania corporation and has been a wholly owned subsidiary of Defendant J&J since its acquisition by J&J in October 1999. Centocor's principal place of business is located at 200 Great Valley Parkway, Malvern, Pennsylvania.

85.   Defendant Janssen Pharmaceutica Products, L.P. ("Janssen") is a New Jersey limited partnership with a principal place of business located at 1125 Trenton-Harbourton Road, Titusville, New Jersey 08560. Janssen is a subsidiary of J&J.

86.   Defendant McNeil-PPC, Inc., is a New Jersey corporation. McNeil-PPC, Inc. is a subsidiary of J&J. McNeil Consumer & Specialty Pharmaceuticals is a division of McNeil-PPC, Inc. and has a principal place of business located at 7050 Camp Hill Road, Fort Washington, Pennsylvania 19034.

- 14 -

87.   Defendant Ortho Biotech ("Ortho") is New Jersey corporation and has been a wholly owned subsidiary of Defendant J&J since its formation by J&J in 1990. Ortho's principal place of business is located at 700 U.S. Highway 202, Raritan, New Jersey.

88.   The Johnson & Johnson Group manufactures several drugs reimbursed by the Montana Medicaid Program and which are purchased by citizens of the State of Montana.

15.   Novartis

89.   Defendant Novartis Pharmaceuticals Corporation ("Novartis") is a New Jersey corporation with its principal place of business at One Health Plaza, East Hanover, New Jersey. Novartis is a U.S. affiliate of Swiss-based Novartis AG, which reported a net income of $4.2 billion on sales of $19.1 billion in 2001.

90.   Novartis manufactures several drugs reimbursed by the Montana Medicaid Program and which are purchased by citizens of the State of Montana.

16.   Pfizer

91.   Defendant Pfizer, Inc. ("Pfizer") is a Delaware corporation with its principal place of business at 235 East 42nd Street, New York, New York. Pfizer is one of the largest pharmaceutical companies in the United States, whether measured by number of prescriptions written, revenues, or market capitalization.

92.   Pfizer manufactures several drugs reimbursed by the Montana Medicaid Program and which are purchased by citizens of the State of Montana.

17.   The Pharmacia Group (Pharmacia and Pharmacia & Upjohn)

93.   Defendant Pharmacia Corporation ("Pharmacia") is a Delaware corporation with its principal place of business located at 100 Route 206, North Peapack, New Jersey. Pharmacia was created through the merger of Defendant Pharmacia and Upjohn, Inc. and Monsanto Company on March 31, 2000.

94.   Defendant Pharmacia & Upjohn, Inc. ("P&U") is a subsidiary of Pharmacia Corp. In 1995, P&U was formed through the merger of Pharmacia AB and The Upjohn Company. In

488.   The J&J Group created promotional materials and worksheets to allow them to market the spread between the published AWP and the actual selling price to doctors. For example, a publication accessible through Defendants' web sites entitled "Office-Based Infusion Guide" demonstrates Defendants' aggressive marketing of this spread, specifically noting that, "[d]epending on reimbursement, office-based infusion may provide a financial impact to a physician's practice." Moreover, the "Financial Analysis" section of the guide includes a "REMICADE® (infliximab) Financial Impact Worksheet," which enables doctors see in actual dollars how much additional revenue the use of Remicade® would bring to their practice.

489.   Set forth below in Table 1 are the contract prices (not already referenced above) included in a J&J contract price list (effective from April 1, 1997 through March 31, 1998) contained in a supply agreement with Managed Healthcare Associates, Inc. dated March 17, 1997 and the AWP published in the 1997 *Red Book*, and their associated AWP spread. (J&J000121-23) (Highly Confidential).

Table 1

Drug	Contract Price	AWP	$ Diff AWP	% Spread
Procrit (epoetin alfa)	$950.00 (4000 u/ml 25x1 ml vials)	$1200	$250	20.8%
Ultram (tramadol hcl	$53.97 (1x100 50 mg)	$62.34	$8.37	13.4%
Duragesic fentanyl transdermal)	$44.94 (25M 25mcg/hr 1x5)	$53.94	$9	16.7%
Floxin (ofloxacin)	$276.89 (1x100 btls 200 mg/case)	$332.28	$55.39	16.7%
Propulsid (cisapride)	$56.62 (10mgx100)	$67.96	$11.34	16.7%
Risperdal (risperidone)	$335.59 (3 mg 1x100)	$402.72	$67.13	16.7%
Topamax tiramate)	$123.00 (100 mg 1x60)	$147.60	$24.6	16.7%

490.   Additional evidence of the phony nature of this defendant's AWPs arises from its manipulation of its reported AWPs in late 2000 and 2001, when it increased its reported AWPs for certain of the drugs identified in Appendix A across the board without any change in product or service offered. If these AWPs were real, price increases would not be uniform and would

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Exhibit A

CARD SEQ#	Manufacturer	Product Name	Generic Name	NDC	TC DRUG	AWP Dec-97	AWP Dec-98	AWP Dec-99	AWP Dec-00	AWP Dec-01	AWP Dec-02

ID	Group	Product		Generic	NDC						
	J&J GROUP										
1274	JANSSEN (J&J group)	REMICADE	INJ 100MG	Infliximab	57894-0030-01	x					
1273	JANSSEN (J&J group)	ACIPHEX	TAB 20MG	Rabeprazole Sodium	62856-0243-41	x	$369.60	$369.60	$611.33	$685.83	$691.61
1272	JANSSEN (J&J group)	ACIPHEX	TAB 20MG	Rabeprazole Sodium	62856-0243-90	x	$341.96	$341.96	$378.94	$392.00	$427.53
1288	JANSSEN (J&J group)	ACIPHEX	TAB 20MG	Rabeprazole Sodium	50458-0035-05	x	$341.96	$341.96	$341.96	$352.80	$384.79
1299	JANSSEN (J&J group)	DURAGESIC	DIS 100MCG/H	Fentanyl	50458-0033-05	x	$159.89	$175.94	$110.88	$122.50	$128.26
1300	JANSSEN (J&J group)	DURAGESIC	DIS 25MCG/HR	Fentanyl	50458-0034-05	x	$59.04	$55.79	$191.54	$203.27	$213.23
1301	JANSSEN (J&J group)	DURAGESIC	DIS 50MCG/HR	Fentanyl	50458-0036-05	x	$84.02	$86.14	$58.79	$61.87	$72.74
1275	JANSSEN (J&J group)	REMINYL	SOL 4MG/ML	Galantamine Hydrobromide	50458-0399-10		$128.31	$141.22	$154.07	$163.16	$168.84

#	Manufacturer	Brand	Form/Strength	Generic	NDC	
1276	JANSSEN (J&J group)	REMINYL	TAB 12MG	Galantamine Hydrobromide	50458-0392-60	x
1277	JANSSEN (J&J group)	REMINYL	TAB 4MG	Galantamine Hydrobromide	50458-0390-60	x
1278	JANSSEN (J&J group)	REMINYL	TAB 8MG	Galantamine Hydrobromide	50458-0391-60	x
1279	JANSSEN (J&J group)	RISPERDAL	SOL 1MG/ML	Risperidone	50458-0305-03	x
1281	JANSSEN (J&J group)	RISPERDAL	TAB 0.25MG	Risperidone	50458-0301-50	x
1280	JANSSEN (J&J group)	RISPERDAL	TAB 0.25MG	Risperidone	50458-0301-04	x
1283	JANSSEN (J&J group)	RISPERDAL	TAB 0.5MG	Risperidone	50458-0302-50	x
1282	JANSSEN (J&J group)	RISPERDAL	TAB 0.5MG	Risperidone	50458-0302-05	x
1284	JANSSEN (J&J group)	RISPERDAL	TAB 1MG	Risperidone	50458-0300-06	x
1285	JANSSEN (J&J group)	RISPERDAL	TAB 1MG	Risperidone	50458-0300-01	x
1286	JANSSEN (J&J group)	RISPERDAL	TAB 1MG	Risperidone	50458-0300-60	x
1289	JANSSEN (J&J group)	RISPERDAL	TAB 2MG	Risperidone	50458-0320-50	x
1288	JANSSEN (J&J group)	RISPERDAL	TAB 2MG	Risperidone	50458-0320-01	x
1287	JANSSEN (J&J group)	RISPERDAL	TAB 2MG	Risperidone	50458-0320-08	x
1292	JANSSEN (J&J group)	RISPERDAL	TAB 3MG	Risperidone	50458-0330-50	x
1291	JANSSEN (J&J group)	RISPERDAL	TAB 3MG	Risperidone	50458-0330-01	x
1290	JANSSEN (J&J group)	RISPERDAL	TAB 3MG	Risperidone	50458-0330-06	x
1294	JANSSEN (J&J group)	RISPERDAL	TAB 4MG	Risperidone	50458-0350-06	x
1293	JANSSEN (J&J group)	RISPERDAL	TAB 4MG	Risperidone	50458-0350-08	x
1295	JANSSEN (J&J group)	SPORANOX	CAP 100MG	Itraconazole	50458-0290-01	x
1296	JANSSEN (J&J group)	SPORANOX	CAP 100MG	Itraconazole	50458-0290-04	x
1297	JANSSEN (J&J group)	SPORANOX	CAP PULSEPAK	Itraconazole	50458-0290-28	x
1317	MCNEIL (J&J group)	BICITRA	SOL	Sodium Citrate & Citric Acid	17314-9330-01	x
1321	MCNEIL (J&J group)	ELMIRON	CAP 100MG	Pentosan Polysulfate Sodium	17314-9300-01	x
1308	MCNEIL (J&J group)	HALDOL	INJ 5MG/ML	Haloperidol Lactate	00045-0255-40	x
1307	MCNEIL (J&J group)	HALDOL	INJ 5MG/ML	Haloperidol Lactate	00045-0255-01	x
1309	MCNEIL (J&J group)	HALDOL DECAN INJ 100MG/ML		Haloperidol Decanoate	00045-0254-14	x
1310	MCNEIL (J&J group)	HALDOL DECAN INJ 100MG/ML		Haloperidol Decanoate	00045-0254-46	x
1311	MCNEIL (J&J group)	HALDOL DECAN INJ 50MG/ML		Haloperidol Decanoate	00045-0253-01	x
1313	MCNEIL (J&J group)	HALDOL DECAN INJ 50MG/ML		Haloperidol Decanoate	00045-0253-46	x
1312	MCNEIL (J&J group)	HALDOL DECAN INJ 50MG/ML		Haloperidol Decanoate	00045-0253-03	x
1322	MCNEIL (J&J group)	LEVAQUIN	TAB 250MG	Levofloxacin	00045-1520-50	x
1323	MCNEIL (J&J group)	LEVAQUIN	TAB 250MG	Levofloxacin	00045-1520-10	x
1324	MCNEIL (J&J group)	LEVAQUIN	TAB 500MG	Levofloxacin	00045-1525-50	x
1325	MCNEIL (J&J group)	LEVAQUIN	TAB 500MG	Levofloxacin	00045-1525-10	x
1326	MCNEIL (J&J group)	LEVAQUIN	TAB 750MG	Levofloxacin	00045-1530-50	x
1327	MCNEIL (J&J group)	LEVAQUIN	TAB 750MG	Levofloxacin	00045-1530-10	x
1314	MCNEIL (J&J group)	MYCELEX	TRO 10MG	Clotrimazole	17314-9400-01	x
1316	MCNEIL (J&J group)	MYCELEX	TRO 10MG	Clotrimazole	17314-9400-03	x
1315	MCNEIL (J&J group)	MYCELEX	TRO 10MG	Clotrimazole	17314-9400-02	x
1328	MCNEIL (J&J group)	PANCREASE	CAP EC	Amylase-Lipase-Protease	00045-0066-60	x
1329	MCNEIL (J&J group)	PANCREASE	CAP EC	Amylase-Lipase-Protease	00045-0065-69	x
1330	MCNEIL (J&J group)	PANCREASE MT CAP 10		Amylase-Lipase-Protease	00045-0342-50	x
1331	MCNEIL (J&J group)	PANCREASE MT CAP 16		Amylase-Lipase-Protease	00045-0343-60	x
1332	MCNEIL (J&J group)	PANCREASE MT CAP 20		Amylase-Lipase-Protease	00045-0346-60	x
1333	MCNEIL (J&J group)	PANCREASE MT CAP 4		Amylase-Lipase-Protease	00045-0341-60	x
1334	MCNEIL (J&J group)	PARAFON FORT TAB DSC		Chlorzoxazone	00045-0325-60	x
1335	MCNEIL (J&J group)	POLYCITRA SYP		Pot & Sod Citrate w/Citric Ac	17314-9322-01	x
1336	MCNEIL (J&J group)	POLYCITRA-K POW CRYSTALS		Potassium Citrate-Citric Acid	17314-9320-01	x

#	Manufacturer	Product	Description	NDC							
1337	MCNEIL (J&J group)	POLYCITRA-K SOL	Potassium Citrate-Citric Acid	17314-5321-01	x	$18.61	$23.21	$25.28	$26.84	$28.52	$33.13
1338	MCNEIL (J&J group)	POLYCITRA-LC SOL	Pot & Sod Citrates w/Citric Ac	17314-6323-01	x		$23.38	$23.82	$28.80		$33.34
1308	MCNEIL (J&J group)	REGRANEX GEL 0.01%	Becaplermin	00045-0810-15	x		$375.00	$412.40	$438.74	$459.14	$533.15
1365	MCNEIL (J&J group)	TESTODERM CIS 4MG/24HR	Testosterone	17314-4608-03	x	$75.35	$96.00	$98.00	$102.24	$107.34	$124.21
1366	MCNEIL (J&J group)	TESTODERM DIS 6MG/24HR	Testosterone	17314-2835-03	x	$78.14	$95.00	$98.00	$102.24	$107.34	$124.21
1367	MCNEIL (J&J group)	TESTODERM DIS 6MG/24HR	Testosterone	17314-4608-03	x	$75.36	$98.00		$102.24	$107.34	$124.21
1339	MCNEIL (J&J group)	TOLECTIN TAB 600MG	Tolmetin Sodium	00045-0416-60	x	$139.85	$144.54	$157.68	$165.41	$173.51	$200.78
1340	MCNEIL (J&J group)	TOLECTIN DS CAP 400MG	Tolmetin Sodium	00045-0414-60	x	$115.08	$119.11	$129.94	$136.31	$142.99	$165.48
1341	MCNEIL (J&J group)	TOPAMAX CAP 15MG	Topiramate	00045-0647-65	x		$55.52	$71.46	$74.99	$78.66	$91.46
1342	MCNEIL (J&J group)	TOPAMAX CAP 25MG	Topiramate	00045-0645-65	x		$79.20	$86.40	$90.64	$95.08	$110.55
1343	MCNEIL (J&J group)	TOPAMAX TAB 100MG	Topiramate	00045-0641-65	x	$154.84	$162.42	$177.19	$185.88	$194.99	$226.70
1344	MCNEIL (J&J group)	TOPAMAX TAB 200MG	Topiramate	00045-0642-65	x	$161.27	$190.15	$207.44	$217.61	$228.20	$265.41
1345	MCNEIL (J&J group)	TOPAMAX TAB 25MG	Topiramate	00045-0639-65	x	$67.96	$69.28	$75.58	$79.26	$83.17	$96.70
1347	MCNEIL (J&J group)	TYLENOL/COD TAB #3	Acetaminophen w/ Codeine	00045-0513-60	x	$33.91	$35.10	$38.29	$40.16	$42.13	$48.75
1350	MCNEIL (J&J group)	TYLENOL/COD TAB #3	Acetaminophen w/ Codeine	00045-0513-80	x	$266.74	$276.07	$301.18	$315.84	$331.42	$383.25
1346	MCNEIL (J&J group)	TYLENOL/COD TAB #3	Acetaminophen w/ Codeine	00045-0513-73	x	$181.57	$187.22	$182.44	$191.39	$200.75	$232.30
1348	MCNEIL (J&J group)	TYLENOL/COD TAB #3	Acetaminophen w/ Codeine	00045-0513-20	x	$146.75	$151.88	$165.70	$173.82	$182.34	$210.75
1349	MCNEIL (J&J group)	TYLENOL/COD TAB #3	Acetaminophen w/ Codeine	00045-0513-72	x	$161.57	$167.22	$182.44	$191.39	$200.75	$232.30
1351	MCNEIL (J&J group)	TYLENOL/COD TAB #4	Acetaminophen w/ Codeine	00045-0515-70	x	$259.84	$267.90	$292.27	$306.59	$321.61	$372.18
1352	MCNEIL (J&J group)	TYLENOL/COD TAB #4	Acetaminophen w/ Codeine	00045-0515-60	x	$59.92	$62.00	$67.66	$70.97	$74.45	$86.15
1355	MCNEIL (J&J group)	TYLOX CAP 5-500MG	Oxycodone w/ Acetaminophen	00045-0526-79	x	$105.73	$109.49	$119.45	$125.30	$131.45	$152.11
1357	MCNEIL (J&J group)	TYLOX CAP 5-500MG	Oxycodone w/ Acetaminophen	00045-0526-60	x	$80.45	$83.27	$90.84	$95.29	$98.98	$115.66
1356	MCNEIL (J&J group)	ULTRACET TAB 37.5-325	Tramadol-Acetaminophen	00045-0650-60	x					$86.25	$97.71
1357	MCNEIL (J&J group)	ULTRACET TAB 37.5-325	Tramadol-Acetaminophen	00045-0650-10	x					$93.77	$107.46
1358	MCNEIL (J&J group)	ULTRAM TAB 50MG	Tramadol HCl	00045-0659-10	x	$74.75	$78.11	$85.21	$89.39	$93.77	$117.11
1360	MCNEIL (J&J group)	ULTRAM TAB 50MG	Tramadol HCl	00045-0659-70	x	$339.78	$355.07	$387.37	$406.35	$426.28	$532.40
1359	MCNEIL (J&J group)	ULTRAM TAB 50MG	Tramadol HCl	00045-0659-60	x	$67.96	$71.02	$77.47	$81.28	$85.25	$106.48
1361	MCNEIL (J&J group)	URISPAS TAB 100MG	Flavoxate HCl	17314-9220-01	x	$83.80	$107.74	$117.24	$128.86	$132.96	$153.88
1363	MCNEIL (J&J group)	VASCOR TAB 200MG	Bepridil HCl	00045-0682-33	x	$249.82	$255.58	$282.08	$295.91	$310.40	$359.19
1364	MCNEIL (J&J group)	VASCOR TAB 300MG	Bepridil HCl	00045-0683-33	x	$304.79	$316.46	$344.15	$361.01	$376.70	$439.21
1303	MCNEIL CONSUMER (J&J gro	FLEXERIL TAB 10MG	Cyclobenzaprine HCl	50580-0874-11	x	$103.40	$106.50	$110.01	$114.41	$118.32	$127.63

1389 ORTHO (J&J group)	FLOXIN	TAB 200MG	Ofloxacin	00062-1540-02	x	$173.10	$177.43	$187.11	$205.77	$218.90	$248.63
1390 ORTHO (J&J group)	FLOXIN	TAB 300MG	Ofloxacin	00062-1541-02	x	$209.00	$211.15	$234.56	$246.05	$258.12	$295.88
1391 ORTHO (J&J group)	FLOXIN	TAB 400MG	Ofloxacin	00062-1542-01	x	$434.52	$445.38	$494.77	$519.01	$544.44	$624.08
1392 ORTHO (J&J group)	TERAZOL 3	CRE 0.8%	Terconazole Vaginal	00062-5356-01	x	$26.22	$27.42	$30.43	$32.23	$33.82	$39.13
1393 ORTHO (J&J group)	TERAZOL 3	SUP 80MG	Terconazole Vaginal	00062-5351-01	x	$28.32	$27.42	$30.43	$32.25	$33.82	$39.13
1394 ORTHO (J&J group)	TERAZOL 7	CRE 0.4%	Terconazole Vaginal	00062-5350-01	x	$25.22	$27.42	$30.43	$32.23	$33.82	$39.13

#	Manufacturer	Product	Form/Strength	NDC		Price	Price	Price	Price	Price
1453	ORTHO BIOTECH (J&J GROU PROCRIT	Epoetin Alfa	INJ 10000U/ML	59676-0310-01		$707.78	$720.00	$720.00	$774.28	$801.39
1455	ORTHO BIOTECH (J&J GROU PROCRIT	Epoetin Alfa	INJ 10000U/ML	59676-0312-01		$1,415.52	$1,440.00	$1,440.00	$1,548.50	$1,602.72
1454	ORTHO BIOTECH (J&J GROU PROCRIT	Epoetin Alfa	INJ 10000U/ML	59676-0310-02		$2,949.00	$3,000.00	$3,000.00	$3,226.20	$3,339.00
1456	ORTHO BIOTECH (J&J GROU PROCRIT	Epoetin Alfa	INJ 20000U/ML	59676-0320-01		$1,415.52	$1,440.00	$1,440.00	$1,548.50	$1,602.72
1457	ORTHO BIOTECH (J&J GROU PROCRIT	Epoetin Alfa	INJ 2000U/ML	59676-0302-01		$144.00	$144.00	$144.00	$154.87	$160.27
1458	ORTHO BIOTECH (J&J GROU PROCRIT	Epoetin Alfa	INJ 2000U/ML	59676-0302-02		$590.00	$600.00	$600.00	$645.30	$667.80
1459	ORTHO BIOTECH (J&J GROU PROCRIT	Epoetin Alfa	INJ 3000U/ML	59676-0303-01		$216.00	$216.00	$216.00	$232.27	$240.41
1460	ORTHO BIOTECH (J&J GROU PROCRIT	Epoetin Alfa	INJ 3000U/ML	59676-0303-02		$900.00	$900.00	$900.00	$967.80	$1,001.70
1461	ORTHO BIOTECH (J&J GROU PROCRIT	Epoetin Alfa	INJ 40000U/ML	59676-0340-01		$288.00	$288.00	$288.00	$309.74	$320.54
1462	ORTHO BIOTECH (J&J GROU PROCRIT	Epoetin Alfa	INJ 40000U/ML	59676-0340-02		$1,200.00	$1,200.00	$1,200.00	$1,290.60	$1,335.60
1463	ORTHO BIOTECH (J&J GROU PROCRIT	Epoetin Alfa	INJ 40000U/ML	59676-0340-02	X	$1,200.00	$1,200.00	$1,200.00	$1,335.80	$1,335.80
1470	ORTHO DERM (J&J group)	ERYCETTE	PAD 2% PKT	00062-1185-01	X	$22.02	$20.82	$25.88	$27.02	$28.34
1463	ORTHO DERM (J&J group)	Erythromycin (Acne Act)		00062-1185-01		$25.02	$26.94	$29.40	$31.10	$32.63
1498	ORTHO DERM (J&J group)	Griseofulvin Microsize		00062-0206-04	X	$118.40	$126.18	$140.96	$149.05	$156.36
1469	ORTHO DERM (J&J group)	GRIFULVIN V SUS 125/5ML	GRIFULVIN V TAB MICR 500	00062-0214-80	X	$45.72	$49.44	$53.94	$56.10	$58.65
1472	ORTHO DERM (J&J group)	MONISTAT	CRE DERM 2%	00062-5434-03	X	$23.55	$25.55	$27.90	$29.02	$30.43
1473	ORTHO DERM (J&J group)	MONISTAT	CRE DERM 2%	00062-5434-01	X	$14.04	$15.24	$16.62	$17.28	$18.13
1471	ORTHO DERM (J&J group)	Miconazole Nitrate (Topical)		00062-5434-02						
1474	ORTHO DERM (J&J group)	RENOVA	CRE 0.02%	00062-0187-02	X	$67.86	$73.80	$76.75	$80.16	$83.11
1476	ORTHO DERM (J&J group)	RENOVA	CRE 0.05%	00062-0165-03	X	$48.66	$53.19	$57.84	$60.18	$63.11
1475	ORTHO DERM (J&J group)	RENOVA	CRE 0.05%	00062-0185-05	X	$28.20	$29.34	$32.04	$33.80	$35.56
1477	ORTHO DERM (J&J group)	Tretinoin	CRE 0.025%	00062-0185-01	X	$53.40	$55.56	$60.66	$64.18	$67.32
1478	ORTHO DERM (J&J group)	Tretinoin	CRE 0.05%	00062-0185-02	X	$30.42	$32.94	$35.94	$38.03	$39.99
1479	ORTHO DERM (J&J group)	Tretinoin	CRE 0.05%	00062-0175-12	X	$57.06	$61.74	$67.38	$71.29	$74.78
1460	ORTHO DERM (J&J group)	Tretinoin	CRE 0.05%	00062-0175-13	X	$35.46	$38.40	$41.94	$44.38	$46.55
1481	ORTHO DERM (J&J group)	Tretinoin	CRE 0.1%	00062-0275-23	X	$66.60	$72.00	$78.54	$83.10	$87.17
1482	ORTHO DERM (J&J group)	Tretinoin	CRE 0.1%	00062-0275-01	X	$23.64	$25.62	$27.96	$29.56	$31.03
1483	ORTHO DERM (J&J group)	Tretinoin	GEL 0.01%	00062-0575-44	X	$55.92	$60.46	$66.00	$69.83	$73.25
1484	ORTHO DERM (J&J group)	Tretinoin	GEL 0.01%	00062-0575-46	X	$23.88	$25.86	$28.20	$29.83	$31.30
1485	ORTHO DERM (J&J group)	Tretinoin	GEL 0.025%	00062-0475-42	X	$59.34	$60.96	$66.54	$70.40	$73.85
1486	ORTHO DERM (J&J group)	Tretinoin	GEL 0.025%	00062-0475-45	X	$45.69	$50.46	$55.02	$58.21	$60.83
1487	ORTHO DERM (J&J group)	RETIN-A	LIQ 0.05%	00062-0075-07	X					
1488	ORTHO DERM (J&J group)	RETIN-A MICR GEL 0.04%	Tretinoin Microsphere	00062-0204-03	X					
1489	ORTHO DERM (J&J group)	RETIN-A MICR GEL 0.04%	Tretinoin Microsphere	00062-0204-02	X	$55.82	$61.28	$66.84	$69.52	$72.82
1491	ORTHO DERM (J&J group)	RETIN-A MICR GEL 0.1%	Tretinoin Microsphere	00062-0190-03	X	$28.89	$32.34	$35.34	$36.76	$38.56
1490	ORTHO DERM (J&J group)	RETIN-A MICR GEL 0.1%	Tretinoin Microsphere	00062-0190-02	X	$13.08	$13.92	$14.64	$15.48	$16.25
1492	ORTHO DERM (J&J group)	SPECTAZOLE	CRE 1%	00062-5460-02	X	$42.98	$47.40	$52.74	$55.80	$58.54
1494	ORTHO DERM (J&J group)	SPECTAZOLE	CRE 1%	00062-5460-03	X				$70.46	
1493	ORTHO DERM (J&J group)	SPECTAZOLE	CRE 1%	00062-5460-01	X	$22.26	$23.88	$25.56	$27.36	$28.70

EXHIBIT 2

UNITED STATES DISTRICT COURT FOR

THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	MDL No. 1456
	CIVIL ACTION: 01-CV-12257-PBS
	Judge Patti B. Saris
THIS DOCUMENT RELATES TO:	
State of Nevada v. American Home Products Corp., et al., D. Nev. Cause No. CV-N-02-0202-ECR	

STATE OF NEVADA'S AMENDED COMPLAINT

(FILED UNDER SEAL)

1534.13 0045 BSC.DOC

USA was a wholly-owned subsidiary of Fujisawa Pharmaceutical Co. Ltd. In 1998, Fujisawa Healthcare assumed responsibility for Fujisawa USA's portfolio of proprietary products.

50. Fujisawa Healthcare and Fujisawa USA are collectively referred to as "The Fujisawa Group."

51. The Fujisawa Group manufactures several drugs reimbursed by the Nevada Medicaid Program and which are purchased by citizens of the State of Nevada.

7. **Immunex**

52. Defendant Immunex Corporation ("Immunex"), a wholly owned subsidiary of Defendant Amgen, Inc., is a Washington corporation with its principal place of business at 51 University Street, Seattle, Washington. Immunex is a company that develops products for the treatment of cancer, asthma, rheumatoid arthritis, inflammatory diseases, infectious diseases, and cardiovascular diseases. In 1999, its total revenues were $542 million.

53. Defendant Immunex has been a wholly owned subsidiary of Defendant Amgen, since Immunex' acquisition in July 2002.

54. Immunex manufactures several drugs reimbursed by the Nevada Medicaid Program and which are purchased by citizens of the State of Nevada.

8. **The Johnson & Johnson Group (J&J, Centocor, Janssen, McNeil, Ortho)**

55. Defendant Johnson & Johnson ("J&J") is a New Jersey corporation with its principal place of business located at One Johnson & Johnson Plaza, New Brunswick, New Jersey. In 2001, pharmaceutical sales represented 45% of J&J's worldwide sales and 19% of its operational growth.

56. Defendant Centocor, Inc. ("Centocor") is a Pennsylvania corporation and has been a wholly owned subsidiary of Defendant J&J since its acquisition by J&J in October 1999. Centocor's principal place of business is located at 200 Great Valley Parkway, Malvern, Pennsylvania.

- 9 -

57.   Defendant Janssen Pharmaceutica Products, L.P. ("Janssen") is a New Jersey limited partnership with a principal place of business located at 1125 Trenton-Harbourton Road, Titusville, New Jersey 08560. Janssen is a subsidiary of J&J.

58.   Defendant McNeil-PPC, Inc., is a New Jersey corporation. McNeil-PPC, Inc. is a subsidiary of J&J. McNeil Consumer & Specialty Pharmaceuticals is a division of McNeil-PPC, Inc. and has a principal place of business located at 7050 Camp Hill Road, Fort Washington, Pennsylvania 19034.

59.   Defendant Ortho Biotech ("Ortho") is New Jersey corporation and has been a wholly owned subsidiary of Defendant J&J since its formation by J&J in 1990. Ortho's principal place of business is located at 700 U.S. Highway 202, Raritan, New Jersey.

60.   The Johnson & Johnson Group manufactures several drugs reimbursed by the Nevada Medicaid Program and which are purchased by citizens of the State of Nevada.

9.   **Novartis**

61.   Defendant Novartis Pharmaceuticals Corporation ("Novartis") is a New Jersey corporation with its principal place of business at One Health Plaza, East Hanover, New Jersey. Novartis is a U.S. affiliate of Swiss-based Novartis AG, which reported a net income of $4.2 billion on sales of $19.1 billion in 2001.

62.   Novartis manufactures several drugs reimbursed by the Nevada Medicaid Program and which are purchased by citizens of the State of Nevada.

10.   **Pfizer**

63.   Defendant Pfizer, Inc. ("Pfizer") is a Delaware corporation with its principal place of business at 235 East 42nd Street, New York, New York. Pfizer is one of the largest pharmaceutical companies in the United States, whether measured by number of prescriptions written, revenues, or market capitalization.

64.   Pfizer manufactures several drugs reimbursed by the Nevada Medicaid Program and which are purchased by citizens of the State of Nevada.

309.   The J&J Group created promotional materials and worksheets to allow them to market the spread between the published AWP and the actual selling price to doctors. For example, a publication accessible through Defendants' web sites entitled "Office-Based Infusion Guide" demonstrates Defendants' aggressive marketing of this spread, specifically noting that, "[d]epending on reimbursement, office-based infusion may provide a financial impact to a physician's practice." Moreover, the "Financial Analysis" section of the guide includes a "REMICADE® (infliximab) Financial Impact Worksheet," which enables doctors see in actual dollars how much additional revenue the use of Remicade® would bring to their practice.

310.   Set forth below in Table 1 are the contract prices (not already referenced above) included in a J&J contract price list (effective from April 1, 1997 through March 31, 1998) contained in a supply agreement with Managed Healthcare Associates, Inc. dated March 17, 1997 and the AWP published in the 1997 *Red Book*, and their associated AWP spread. (J&J000121-23) (Highly Confidential).

Table 1

Drug	Contract Price	AWP	$ Diff AWP	% Spread
Procrit (epoetin alfa)	$950.00 (4000 u/ml 25x1 ml vials)	$1200	$250	20.8%
Ultram (tramadol hcl	$53.97 (1x100 50 mg)	$62.34	$8.37	13.4%
Duragesic fentanyl transdermal)	$44.94 (25M 25mcg/hr 1x5)	$53.94	$9	16.7%
Floxin (ofloxacin)	$276.89 (1x100 btls 200 mg/case)	$332.28	$55.39	16.7%
Propulsid (cisapride)	$56.62 (10mgx100)	$67.96	$11.34	16.7%
Risperdal (risperidone)	$335.59 (3 mg 1x100)	$402.72	$67.13	16.7%
Topamax tiramate)	$123.00 (100 mg 1x60)	$147.60	$24.6	16.7%

311.   Additional evidence of the phony nature of this defendant's AWPs arises from its manipulation of its reported AWPs in late 2000 and 2001, when it increased its reported AWPs for certain of the drugs identified in Appendix A across the board without any change in product or service offered. If these AWPs were real, price increases would not be uniform and would bear a relationship to some product change. At the same time of these price increases, cost to

- 86 -

Exhibit A

CARD SEQ#	Manufacturer	Product Name	Generic Name	NDC	AWP Dec-97	AWP Dec-98	AWP Dec-99	AWP Dec-00	AWP Dec-01	AWP Dec-02

J&J GROUP

1274 JANSSEN (J&J group)	REMICADE	INJ 100MG	Infliximab	57894-0030-01			
1273 JANSSEN (J&J group)	ACIPHEX	TAB 20MG	Rabeprazole Sodium	62856-0243-41	$359.90	$565.00	$811.33	$685.95	$891.81
1272 JANSSEN (J&J group)	ACIPHEX	TAB 20MG	Rabeprazole Sodium	62856-0243-90	$341.96	$359.60	$376.94	$392.00	$427.53
1208 JANSSEN (J&J group)	ACIPHEX	TAB 20MG	Rabeprazole Sodium	62856-0243-30		$341.96	$341.96	$352.80	$384.78
1299 JANSSEN (J&J group)	DURAGESIC	DIS 100MCG/H	Fentanyl	50458-0036-05	$193.80	$176.54	$110.68	$113.98	$126.28
1300 JANSSEN (J&J group)	DURAGESIC	DIS 25MCG/HR	Fentanyl	50458-0033-05	$58.04	$58.79	$181.94	$203.27	$251.41
1301 JANSSEN (J&J group)	DURAGESIC	DIS 50MCG/HR	Fentanyl	50458-0034-05	$84.02	$88.14	$58.79	$61.87	$72.74
	DURAGESIC	DIS 75MCG/HR	Fentanyl	50458-0035-05	$128.33	$141.22	$66.15	$101.83	$123.61
						$154.07	$163.16	$106.82	$194.31

#	Manufacturer	Brand	Form/Strength	Generic	NDC						
1275	JANSSEN (J&J group)	REMINYL	SOL 4MG/ML	Galantamine Hydrobromide	50458-0399-10					$144.00	$188.54
1276	JANSSEN (J&J group)	REMINYL	TAB 12MG	Galantamine Hydrobromide	50458-0392-60					$729.60	$149.96
1277	JANSSEN (J&J group)	REMINYL	TAB 4MG	Galantamine Hydrobromide	50458-0390-60					$129.60	$149.96
1278	JANSSEN (J&J group)	REMINYL	TAB 8MG	Galantamine Hydrobromide	50458-0391-60					$129.60	$149.96
1279	JANSSEN (J&J group)	RISPERDAL	SOL 1MG/ML	Risperidone	50458-0305-03	$85.96	$93.76	$90.38	$103.20	$117.54
1280	JANSSEN (J&J group)	RISPERDAL	TAB 0.25MG	Risperidone	50458-0301-50		$152.00	$1,295.64	$1,159.46	$1,393.81	$1,540.31
1281	JANSSEN (J&J group)	RISPERDAL	TAB 0.25MG	Risperidone	50458-0301-04		$152.00	$152.00	$159.46	$187.27	$184.85
1282	JANSSEN (J&J group)	RISPERDAL	TAB 0.5MG	Risperidone	50458-0302-08		$139.33	$152.00	$159.46	$187.27	$191.73
1283	JANSSEN (J&J group)	RISPERDAL	TAB 0.5MG	Risperidone	50458-0302-50		$1,161.02	$1,295.64	$1,159.46	$1,393.81	$1,597.85
1284	JANSSEN (J&J group)	RISPERDAL	TAB 1MG	Risperidone	50458-0300-05		$1,161.02	$1,295.64	$1,328.70	$1,393.81	$1,651.18
1285	JANSSEN (J&J group)	RISPERDAL	TAB 1MG	Risperidone	50458-0300-01	$128.96	$232.18	$253.30	$265.70	$276.72	$330.19
1286	JANSSEN (J&J group)	RISPERDAL	TAB 3MG	Risperidone	50458-0330-06	$1,788.68	$1,922.62	$2,108.42	$2,311.73	$2,320.10	$2,669.43
1287	JANSSEN (J&J group)	RISPERDAL	TAB 2MG	Risperidone	50458-0320-01	$257.71	$395.48	$421.84	$442.31	$463.98	$551.64
1288	JANSSEN (J&J group)	RISPERDAL	TAB 2MG	Risperidone	50458-0320-50	$214.92	$201.90	$253.00	$265.39	$278.40	$318.13
1289	JANSSEN (J&J group)	RISPERDAL	TAB 3MG	Risperidone	50458-0320-06	$2,112.14	$2,282.10	$2,469.69	$2,611.86	$2,739.65	$3,215.45
1290	JANSSEN (J&J group)	RISPERDAL	TAB 3MG	Risperidone	50458-0330-01	$422.45	$456.44	$497.96	$522.36	$547.98	$643.13
1291	JANSSEN (J&J group)	RISPERDAL	TAB 3MG	Risperidone	50458-0330-50	$253.46	$273.66	$298.78	$313.42	$326.78	$385.88
1292	JANSSEN (J&J group)	RISPERDAL	TAB 4MG	Risperidone	50458-0350-01	$573.38	$601.46	$656.18	$689.33	$722.06	$847.46
1293	JANSSEN (J&J group)	RISPERDAL	TAB 4MG	Risperidone	50458-0350-05	$344.03	$360.89	$393.72	$413.02	$433.25	$508.50
1294	JANSSEN (J&J group)	SPORANOX	CAP 100MG	Itraconazole	50458-0290-01	$181.49	$194.36	$212.05	$222.46	$233.35	$268.25
1295	JANSSEN (J&J group)	SPORANOX	CAP 100MG	Itraconazole	50458-0290-04	$181.49	$194.36	$212.05	$222.46	$233.35	$268.25
1296	JANSSEN (J&J group)	SPORANOX	CAP PULSEPAK	Itraconazole	50458-0292-28	$181.49	$181.40	$198.00	$207.71	$217.86	$255.90
1297	JANSSEN (J&J group)	BICITRA	SOL	Sodium Citrate & Citric Acid	17314-9300-01	$15.02	$16.32	$17.22	$18.54	$21.46
1298	JANSSEN (J&J group)	ELMIRON	CAP 100MG	Pentosan Polysulfate Sodium	17314-0300-01	$156.25	$170.33	$176.68	$185.30	$185.30	$227.28
1299	JANSSEN (J&J group)	HALDOL	INJ 5MG/ML	Haloperidol Lactate	00045-0255-49	$66.44	$69.43	$75.76	$79.46	$83.35	$96.45
1300	JANSSEN (J&J group)	HALDOL	INJ 5MG/ML	Haloperidol Lactate	00045-0255-01	$68.15	$71.22	$77.70	$81.50	$85.50	$99.94
1301	JANSSEN (J&J group)	HALDOL DECAN	INJ 100MG/ML	Haloperidol Decanoate	00045-0254-14	$268.92	$275.64	$300.72	$315.48	$330.81	$382.93
1302	JANSSEN (J&J group)	HALDOL DECAN	INJ 100MG/ML	Haloperidol Decanoate	00045-0254-46	$268.92	$275.64	$300.72	$315.48	$330.81	$382.93
1303	JANSSEN (J&J group)	HALDOL DECAN	INJ 50MG/ML	Haloperidol Decanoate	00045-0253-01	$283.14	$300.47	$327.80	$343.87	$360.72	$417.41
1304	JANSSEN (J&J group)	HALDOL DECAN	INJ 50MG/ML	Haloperidol Decanoate	00045-0253-46	$146.62	$150.28	$193.94	$171.97	$180.40	$208.75
1305	JANSSEN (J&J group)	HALDOL DECAN	INJ 50MG/ML	Haloperidol Decanoate	00045-0253-03	$87.95	$80.14	$98.34	$103.16	$108.22	$126.22
1306	JANSSEN (J&J group)	LEVAQUIN	TAB 250MG	Levofloxacin	00045-1920-56	$314.70	$328.86	$365.33	$365.33	$378.64	$431.38
1307	JANSSEN (J&J group)	LEVAQUIN	TAB 250MG	Levofloxacin	00045-1520-10	$833.00	$662.33	$735.78	$735.78	$775.22	$866.76
1308	JANSSEN (J&J group)	LEVAQUIN	TAB 500MG	Levofloxacin	00045-1525-30	$167.57	$384.11	$420.70	$426.70	$443.78	$503.81
1309	JANSSEN (J&J group)	LEVAQUIN	TAB 500MG	Levofloxacin	00045-1525-10	$739.93	$772.62	$858.53	$858.53	$892.87	$1,013.70
1310	JANSSEN (J&J group)	LEVAQUIN	TAB 750MG	Levofloxacin	00045-1530-50			$620.20	$841.01	$914.21
1311	JANSSEN (J&J group)	LEVAQUIN	TAB 750MG	Levofloxacin	00046-1530-10			$1,040.40	$1,082.02	$1,228.48
1312	JANSSEN (J&J group)	MYCELEX	TRO 10MG	Clorimazole	17314-9400-01	$73.25	$87.40	$87.40	$92.64	$96.36	$111.50
1313	JANSSEN (J&J group)	MYCELEX	TRO 10MG	Clorimazole	17314-9400-03	$193.04	$158.72	$156.72	$169.25	$176.02	$202.54
1314	JANSSEN (J&J group)	MYCELEX	TRO 10MG	Clorimazole	17314-9400-02	$78.28	$93.37	$93.37	$98.96	$102.98	$118.14
1315	JANSSEN (J&J group)	PANCREASE	CAP EC	Amylase-Lipase-Protease	00045-0095-60	$37.15	$38.45	$41.94	$43.99	$46.15	$53.40
1316	JANSSEN (J&J group)	PANCREASE	CAP EC	Amylase-Lipase-Protease	00045-0095-48	$88.45	$91.56	$99.80	$104.78	$109.82	$127.20
1317	JANSSEN (J&J group)	PANCREASE	CAP 10	Amylase-Lipase-Protease	00045-0342-60	$73.11	$75.70	$82.53	$86.63	$90.88	$105.18
1318	JANSSEN (J&J group)	PANCREASE MT	CAP 10	Amylase-Lipase-Protease	00045-0343-60	$117.43	$121.55	$132.50	$139.00	$145.91	$168.85
1319	JANSSEN (J&J group)	PANCREASE MT	CAP 16	Amylase-Lipase-Protease	00045-0341-60	$166.27	$181.39	$165.18	$173.24	$181.73	$210.29
1320	JANSSEN (J&J group)	PANCREASE MT	CAP 4	Amylase-Lipase-Protease	00045-0341-60	$29.28	$30.28	$33.04	$34.69	$30.36	$42.08
1321	JANSSEN (J&J group)	PARAFON FORTE	TAB DSC	Chlorzoxazone	00045-0225-60	$112.55	$116.46	$127.08	$133.31	$139.64	$161.81
1322	JANSSEN (J&J group)	POLYCITRA	SYP	Pot & Sod Citrates w/Citric Ac	17314-9322-01		$23.38	$23.38	$26.82	$28.80	$33.34
1323	JANSSEN (J&J group)	POLYCITRA	SYP	Potassium Citrate-Citric Acid	17314-9320-01		$73.90	$80.28	$84.72	$91.08	$105.40
1324	JANSSEN (J&J group)	POLYCITRA-K	POW CRYSTALS	Potassium Citrate-Citric Acid	17314-8321-01	$18.61	$23.21	$25.28	$26.64	$28.82	$33.13
1325	JANSSEN (J&J group)	POLYCITRA-K	SOL	Potassium Citrate-Citric Acid	17314-8323-01		$23.34	$23.34	$26.82	$28.80	$33.34
1326	JANSSEN (J&J group)	POLYCITRA-LC	SOL	Pot & Sod Citrates w/Citric Ac	00046-0810-15		$378.00	$412.40	$438.74	$465.14	$553.15
1327	JANSSEN (J&J group)	REGRANEX	GEL 0.01%	Becaplermin	17314-0810-15	$76.35	$86.00	$86.00	$102.24	$107.34	$124.21
1328	JANSSEN (J&J group)	TESTODERM	DIS 4MG/24HR	Testosterone	17314-2838-43	$79.14	$86.00	$86.00	$102.24	$107.34	$124.21
1329	JANSSEN (J&J group)	TESTODERM	DIS 6MG/24HR	Testosterone	17314-4809-03	$76.35	$86.00	$86.00	$102.24	$107.34	$124.21
1330	JANSSEN (J&J group)	TOLECTIN	TAB 600MG	Tolmetin Sodium	00045-0419-60	$138.66	$144.54	$157.86	$165.41	$173.51	$200.76

1340	MCNEIL (J&J group)	TOLECTIN DS CAP 400MG	Tolmetin Sodium	00045-0414-60	$115.08	$119.11	$129.94	$136.31	$142.89	$165.48
1341	MCNEIL (J&J group)	TOPAMAX CAP 15MG	Topiramate	00045-0647-65		$65.52	$68.40	$74.98	$78.66	$91.46
1342	MCNEIL (J&J group)	TOPAMAX CAP 25MG	Topiramate	00045-0645-65		$79.20	$90.84	$95.08	$95.08	$110.56
1343	MCNEIL (J&J group)	TOPAMAX TAB 100MG	Topiramate	00045-0641-65	$154.64	$162.42	$177.19	$185.86	$194.93	$226.70
1344	MCNEIL (J&J group)	TOPAMAX TAB 200MG	Topiramate	00045-0642-65	$181.27	$190.15	$207.44	$217.81	$226.26	$265.41
1345	MCNEIL (J&J group)	TOPAMAX TAB 25MG	Topiramate	00045-0639-85	$67.98	$69.28	$75.55	$79.28	$83.17	$98.70
1347	MCNEIL (J&J group)	TYLENOL/COD TAB #3	Acetaminophen w/ Codeine	00045-0513-60	$33.91	$35.10	$38.23	$40.16	$42.13	$48.75
1350	MCNEIL (J&J group)	TYLENOL/COD TAB #3	Acetaminophen w/ Codeine	00045-0513-60	$266.74	$276.07	$301.16	$315.94	$331.42	$383.25
1346	MCNEIL (J&J group)	TYLENOL/COD TAB #3	Acetaminophen w/ Codeine	00045-0513-73	$161.57	$167.22	$182.44	$191.35	$200.75	$232.30
1348	MCNEIL (J&J group)	TYLENOL/COD TAB #3	Acetaminophen w/ Codeine	00045-0513-70	$148.75	$151.88	$165.70	$173.82	$182.34	$210.75
1349	MCNEIL (J&J group)	TYLENOL/COD TAB #3	Acetaminophen w/ Codeine	00045-0513-72	$161.57	$167.22	$182.44	$191.39	$200.75	$232.30
1353	MCNEIL (J&J group)	TYLENOL/COD TAB #4	Acetaminophen w/ Codeine	00045-0515-70	$286.84	$287.90	$292.27	$306.59	$321.61	$372.16
1352	MCNEIL (J&J group)	TYLENOL/COD TAB #4	Acetaminophen w/ Codeine	00045-0515-60	$59.92	$62.02	$67.66	$70.97	$74.45	$86.15
1355	MCNEIL (J&J group)	TYLOX CAP 5-500MG	Oxycodone w/ Acetaminophen	00045-0526-79	$105.76	$109.49	$119.45	$125.30	$131.45	$152.11
1354	MCNEIL (J&J group)	TYLOX CAP 5-500MG	Oxycodone w/ Acetaminophen	00045-0526-60	$80.45	$83.27	$90.84	$95.29	$99.96	$115.66
1357	MCNEIL (J&J group)	ULTRACET TAB 37.5-325	Tramadol-Acetaminophen	00045-0650-80					$85.25	$97.71
1356	MCNEIL (J&J group)	ULTRACET TAB 37.5-325	Tramadol-Acetaminophen	00045-0650-10					$93.77	$107.49
1358	MCNEIL (J&J group)	ULTRAM TAB 50MG	Tramadol HCl	00045-0659-10	$74.75	$78.11	$85.21	$89.39	$93.77	$117.11
1360	MCNEIL (J&J group)	ULTRAM TAB 50MG	Tramadol HCl	00045-0659-70	$339.78	$355.07	$387.37	$406.38	$426.28	$532.40
1359	MCNEIL (J&J group)	ULTRAM TAB 50MG	Tramadol HCl	00045-0659-60	$67.96	$71.02	$77.47	$81.26	$85.28	$106.48
1361	MCNEIL (J&J group)	URISPAS TAB 100MG	Flavoxate HCl	17314-8220-01	$85.50	$107.74	$117.24	$126.86	$132.86	$153.86
1363	MCNEIL (J&J group)	VASCOR TAB 200MG	Bepridil HCl	00045-0682-33	$249.82	$258.56	$282.08	$296.61	$310.40	$359.18
1364	MCNEIL (J&J group)	VASCOR TAB 300MG	Bepridil HCl	00045-0683-33	$304.79	$315.46	$344.15	$361.01	$378.70	$438.21
1383	MCNEIL CONSUMER (J&J group)	FLEXERIL TAB 10MG	Cyclobenzaprine HCl	50580-0874-11	$103.40	$108.50	$110.01	$114.41	$115.32	$127.63

#	Company	Brand	Form/Strength	Generic	NDC							
1389	ORTHO (J&J group)	FLOXIN	TAB 200MG	Ofloxacin	00062-1540-02	$173.10		$177.43	$197.11	$205.77	$216.90	$246.63
1390	ORTHO (J&J group)	FLOXIN	TAB 300MG	Ofloxacin	00062-1541-02	$206.00	$211.15		$234.66	$246.06	$258.12	$295.68
1391	ORTHO (J&J group)	FLOXIN	TAB 400MG	Ofloxacin	00062-1542-01	$434.62	$445.38		$464.77	$519.01	$544.44	$624.06
1392	ORTHO (J&J group)	TERAZOL 3	CRE 0.8%	Terconazole Vaginal	00062-3356-01	$26.22	$27.42		$30.43	$32.23	$33.82	$39.13
1393	ORTHO (J&J group)	TERAZOL 3	SUP 80MG	Terconazole Vaginal	00062-5351-01	$26.22	$27.42		$30.43	$32.23	$33.82	$39.13
1394	ORTHO (J&J group)	TERAZOL 7	CRE 0.4%	Terconazole Vaginal	00062-5350-01	$26.22	$27.42		$30.43	$32.23	$33.82	$39.13
1453	ORTHO BIOTECH (J&J GROUP)	PROCRIT	INJ 10000/ML	Epoetin Alfa	59676-0310-01	$707.78	$720.00		$720.00	$774.29	$801.36	$801.36
1455	ORTHO BIOTECH (J&J GROUP)	PROCRIT	INJ 10000/ML	Epoetin Alfa	59676-0312-01	$1,415.52	$1,440.00		$1,440.00	$1,548.50	$1,602.72	$1,602.72
1454	ORTHO BIOTECH (J&J GROUP)	PROCRIT	INJ 10000/ML	Epoetin Alfa	59676-0310-02	$2,649.00	$3,000.00		$3,000.00	$3,226.20	$3,339.00	$3,339.00
1456	ORTHO BIOTECH (J&J GROUP)	PROCRIT	INJ 20000/ML	Epoetin Alfa	59676-0320-01	$1,415.52	$1,440.00		$1,440.00	$1,548.60	$1,602.72	$1,602.72
1457	ORTHO BIOTECH (J&J GROUP)	PROCRIT	INJ 2000/ML	Epoetin Alfa	59676-0302-01	$144.00	$144.00		$144.00	$154.87	$160.27	$160.27
1458	ORTHO BIOTECH (J&J GROUP)	PROCRIT	INJ 2000/ML	Epoetin Alfa	59676-0302-02	$600.00	$600.00		$600.00	$645.30	$667.80	$667.80
1459	ORTHO BIOTECH (J&J GROUP)	PROCRIT	INJ 3000/ML	Epoetin Alfa	59676-0303-01	$216.00	$216.00		$216.00	$232.27	$240.41	$240.41
1460	ORTHO BIOTECH (J&J GROUP)	PROCRIT	INJ 3000/ML	Epoetin Alfa	59676-0303-02	$900.00	$900.00		$900.00	$967.80	$1,001.70	$1,001.70
1461	ORTHO BIOTECH (J&J GROUP)	PROCRIT	INJ 4000/ML	Epoetin Alfa	59676-0340-01				$1,920.00	$2,064.72	$2,138.98	$2,138.98
1462	ORTHO BIOTECH (J&J GROUP)	PROCRIT	INJ 4000/ML	Epoetin Alfa	59676-0304-01	$288.00	$288.00		$288.00	$309.74	$320.64	$320.64
1463	ORTHO BIOTECH (J&J GROUP)	PROCRIT	INJ 4000/ML	Epoetin Alfa	59676-0304-02	$1,200.00	$1,200.00		$1,200.00	$1,290.60	$1,335.60	$1,335.60
1470	ORTHO DERM (J&J group)	ERYCETTE	PAD 2% PKT	Erythromycin (Acne Aid)	00062-1185-01	$22.02	$23.82		$25.98	$27.02	$28.34	$30.70
1495	ORTHO DERM (J&J group)	GRIFULVIN V	SUS 125/5ML	Griseofulvin Microsize	00062-0205-04	$26.62	$26.94		$29.40	$31.10	$32.63	$39.28
1496	ORTHO DERM (J&J group)	GRIFULVIN V	TAB MICR 500	Griseofulvin Microsize	00062-0214-50	$116.40	$123.18		$140.88	$148.05	$156.38	$188.23
1473	ORTHO DERM (J&J group)	MONISTAT	CRE DERM 2%	Miconazole Nitrate (Topical)	00062-5434-03	$45.72	$49.44		$53.94	$56.10	$58.85	$66.30
1472	ORTHO DERM (J&J group)	MONISTAT	CRE DERM 2%	Miconazole Nitrate (Topical)	00062-5434-01	$23.58	$25.58		$27.90	$29.02	$30.43	$34.28
1471	ORTHO DERM (J&J group)	MONISTAT	CRE DERM 2%	Miconazole Nitrate (Topical)	00062-5434-02	$14.04	$15.24		$16.62	$17.28	$18.13	$20.43
1474	ORTHO DERM (J&J group)	RENOVA	CRE 0.02%	Tretinoin (Emollient)	00062-0187-32	$63.60	$67.86		$73.80	$60.15	$63.11	$73.50
1478	ORTHO DERM (J&J group)	RENOVA	CRE 0.05%	Tretinoin (Emollient)	00062-0185-03	$49.86	$53.16		$57.84	$76.575	$80.51	$93.78
1475	ORTHO DERM (J&J group)	RENOVA	CRE 0.05%	Tretinoin (Emollient)	00062-0185-05	$29.30	$29.34		$32.04	$50.16	$53.11	$73.50
1477	ORTHO DERM (J&J group)	RETIN-A	CRE 0.025%	Tretinoin	00062-0185-01	$51.40	$55.58		$60.66	$64.16	$35.56	$43.76
1476	ORTHO DERM (J&J group)	RETIN-A	CRE 0.025%	Tretinoin	00062-0185-02	$30.42	$32.94		$35.94	$38.03	$67.32	$62.85
1479	ORTHO DERM (J&J group)	RETIN-A	CRE 0.05%	Tretinoin	00062-0175-12	$57.08	$61.74		$67.36	$71.28	$39.88	$49.09
1480	ORTHO DERM (J&J group)	RETIN-A	CRE 0.05%	Tretinoin	00062-0175-13	$35.46	$38.40		$41.84	$44.38	$74.78	$92.03
1481	ORTHO DERM (J&J group)	RETIN-A	CRE 0.1%	Tretinoin	00062-0275-23	$66.60	$72.00		$78.54	$83.10	$46.55	$57.29
1482	ORTHO DERM (J&J group)	RETIN-A	CRE 0.1%	Tretinoin	00062-0275-01	$23.64	$25.62		$27.98	$29.58	$87.17	$107.28
1483	ORTHO DERM (J&J group)	RETIN-A	GEL 0.01%	Tretinoin	00062-0572-44	$55.92	$60.48		$66.00	$69.83	$31.03	$34.75
1484	ORTHO DERM (J&J group)	RETIN-A	GEL 0.01%	Tretinoin	00062-0572-46	$23.68	$25.86		$28.20	$29.83	$73.125	$82.02
1485	ORTHO DERM (J&J group)	RETIN-A	GEL 0.025%	Tretinoin	00062-0475-42	$56.34	$60.96		$66.54	$70.40	$31.30	$35.05
1486	ORTHO DERM (J&J group)	RETIN-A	GEL 0.025%	Tretinoin	00062-0475-43	$46.68	$50.46		$55.02	$58.21	$73.85	$82.70
1487	ORTHO DERM (J&J group)	RETIN-A	LIQ 0.05%	Tretinoin	00062-0075-07						$60.83	$73.51

1489 ORTHO DERM (J&J group)	RETIN-A MICR GEL 0.04%	Tretinoin Microsphere	00062-0204-03	$56.82	$61.28	$58.84	$60.52	$72.92	$82.18
1488 ORTHO DERM (J&J group)	RETIN-A MICR GEL 0.04%	Tretinoin Microsphere	00062-0204-02	$29.89	$32.34	$35.34	$35.76	$38.56	$43.45
1491 ORTHO DERM (J&J group)	RETIN-A MICR GEL 0.1%	Tretinoin Microsphere	00062-0190-03						$82.18
1490 ORTHO DERM (J&J group)	RETIN-A MICR GEL 0.1%	Tretinoin Microsphere	00062-0190-02	$13.08	$13.92	$14.64	$115.49	$16.25	$43.45
1492 ORTHO DERM (J&J group)	SPECTAZOLE CRE 1%	Econazole Nitrate	00062-5460-02	$42.98	$47.40	$52.74	$55.80	$58.54	$19.58
1494 ORTHO DERM (J&J group)	SPECTAZOLE CRE 1%	Econazole Nitrate	00062-5460-03	$22.26	$23.85	$25.86	$27.36	$28.70	$70.46
1493 ORTHO DERM (J&J group)	SPECTAZOLE CRE 1%	Econazole Nitrate	00062-5460-01						$34.55

EXHIBIT 3

Page 1

1   UNITED STATES DISTRICT COURT

2   DISTRICT OF MASSACHUSETTS

3   NO. 01CV12257-PBS

4   _____

5   In re: PHARMACEUTICAL   )

6   INDUSTRY AVERAGE WHOLESALE   )

7   PRICE LITIGATION   )

8   _____)

9   THIS DOCUMENT RELATES TO:)

10   STATE OF MONTANA V. ABBOTT   ) VOLUME I

11   LABS, INC., ET AL., D. MONT.   )

12   CAUSE NO. CV-02-09-H-DWM   )

13   -and-   )

14   STATE OF NEVADA V. AMERICAN   )

15   HOME PRODUCTS, ET AL., CA NO.   )

16   02-CV-12086   )

17   _____)

18   H I G H L Y   C O N F I D E N T I A L

19   VIDEOTAPED DEPOSITION OF

20   RAYMOND S. HARTMAN, Ph.D.

21   TUESDAY, 22 AUGUST, 2006

22   9:37 AM

Page 31

```
 1        Q.    Paragraph 21.

 2        A.    (Witness reviews document.)  Okay.  So I'm

 3   at Paragraph 21.  Your question?

 4        Q.    Just directing your attention to Paragraph

 5   21.

 6        A.    Right.

 7        Q.    Do you have it?

 8        A.    I do.

 9        Q.    And what you do in Paragraph 21 is you

10   quote from the Court's August 2005 opinion in which

11   the Court describes your methodology.  And you say

12   at the bottom of the page that we're looking at

13   here, it's Page 14, "She concludes --" she,

14   referring to the Court, "-- Hartman terms his

15   overall approach the yardstick method because he

16   intends to determine what the market reasonably

17   expected the spread to be on average."  Is that

18   what you did in the class actions?

19        A.    As for a yardstick for determination of --

20   of liability, that's what I did, yes.

21        Q.    And the yardstick that you used was 30

22   percent, correct?
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Page 32

1   A.   That's correct.

2   Q.   And that -- you used that 30 percent

3   yardstick because that's what you determined the

4   market expectation to be, correct?

5   A.   I used that 30 percent because I reviewed

6   a set of comparator drugs. I reviewed a set of the

7   -- the information that is discussed in Paragraph

8   21, and I found the 30 percent to be a conservative

9   bound for an expectation for a drug that was not

10   subject to the -- the exploitation of spread for

11   spread competition or to move market share.

12   Q.   And that expectation would apply to the

13   Medicaid agencies as well as the rest of the

14   marketplace, is that correct?

15   A.   This expectation and this understanding

16   was a -- a general statement for the market as a

17   whole.

18   Q.   And that would include Medicaid, correct?

19   A.   It -- it includes all market participants.

20   Q.   Including Medicaid, correct?

21   A.   That's right.

22   Q.   Have you read any of the depositions in

EXHIBIT 4

Calculation of Damages and Penalties for the State of Nevada

Declaration of Raymond S. Hartman

I.   Introduction and Overview

1.   My name is Raymond S. Hartman. I am Director and President of Greylock McKinnon Associates (GMA), an economic consulting and litigation support firm located in Cambridge, Massachusetts. Since I have previously described my qualifications to this Court, I will not repeat them here.

2.   I have been asked by Counsel to the State of Nevada to review the Complaints in this matter;[1] to review the allegations regarding fraudulent pricing practices on the part of Defendants; and to describe the formulaic methodologies I would use to calculate both the damages to the State and its consumers if the alleged fraudulent pricing practices are proved and the penalties to the Defendants arising from those fraudulent practices.

3.   The fraudulent pricing practices specifically alleged of twenty-one Defendant drug manufacturers[2] are characterized as the "AWP Inflation Scheme."[3] Through the alleged "AWP Inflation Scheme" (or "AWP Scheme"), Defendant manufacturers fraudulently increased the AWPs of selected drugs (denoted by NDCs) above the provider acquisition costs (ACs) for which the AWPs were a market signal.[4] Defendants

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[1] I have been instructed by Counsel to respond to the following three complaints:

    1) State of Nevada's Amended Complaint, *In Re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456, United States District Court for the District of Massachusetts, August 1, 2003 (hereafter, *State Complaint*);

    2) State of Nevada's First Amended Complaint, *State of Nevada v. Abbott Laboratories, et. al.* Case No. CV 02-00260; Dept. No. 8, In the Second Judicial District Court in and for the County of Washoe, State of Nevada, October 31, 2003 (hereafter *Federal Complaint*); and

    3) State of Nevada's Amended Complaint Against Defendant Bayer Corporation, *State of Nevada v. Bayer Corporation*, No. CV 02-00260, Dept. No. 8, In the Second Judicial District Court in and for the County of Washoe, State of Nevada, February 27, 2004 (hereafter *Bayer Complaint*).

Hereafter, reference to all three Nevada complaints will be *Complaints*.

[2] Identified and discussed in detail in the *Complaints*. The *State Complaint* identifies 13 Defendants (Amgen, AstraZeneca, The Aventis Group, The Boehringer Group, Braun, The Fujisawa Group, Immunix, The Johnson & Johnson Group, Novartis, Pfizer, The Schering-Plough Group, The Sicor Group and Watson). I have been instructed by Counsel to exclude the GSK Group from my analysis. The *Federal Complaint* identifies another 7 Defendants (Abbott, Baxter, The BMS Group, Dey, The GSK Group, The Pharmacia Group and Tap). The *Bayer Complaint* identifies Bayer as a Defendant. I have been asked by Counsel to omit from my analysis the following Bayer drugs: Koate HP, Kogenate , Konyne-80, Gamimune N 5 % , Gamimune N 10 % and Thrombate III.

[3] *State Complaint*, ¶¶ 5-10; *Federal Complaint*, ¶¶ 3-8; *Bayer Complaint*, ¶¶ 3-8.

[4] Market reliance upon reported AWPs is discussed in ¶¶ 132-135 of the *State Complaint*; ¶¶ 109-112 of the *Federal Complaint;* and ¶¶ 84-87 of the *Bayer Complaint*.

20.   Under Count V of the *Complaints*, the claim is made for recovery of treble damages and civil penalties. Accordingly, if liable, each Defendant will be assessed an amount equal to three times the amount unlawfully obtained and pay civil penalties of not less than $5,000 for each false claim, statement or representation.

21.   I have been directed by Counsel to assume that penalties of $7,500 (i.e., $2,500 plus $5,000) can be assessed for each claim submitted for reimbursement under Medicaid and Medicare that was subject to a deceptive practice and was false.[25] The number of such claims can be calculated as follows.

22.   As noted in ¶ 8 above, the allowed amount (AA) under Medicaid is to be the lesser of {the EAC, the Federal Upper Limit (FUL), the state maximum allowable cost (MAC), the Usual & Customary amount (U&C) charged by a pharmacy, or the amount billed}. Likewise, as noted in ¶ 7 above, EAC is invariably the lowest price.

Hence, for any drug reimbursed under Medicaid, I have been instructed by Counsel that liability occurs as a matter of law if $AA_{jk} > EAC_{jk}$. Furthermore, as discussed above (see footnote 9), $EAC_{jk} = ASP_{jk}$ to the relevant group of providers (pharmacies, physicians). For self-administered drugs reimbursed under Medicaid, j denotes the NDC of the drug and k denotes the Defendant. For physician-administered drugs, j denotes the NDC or the J-Code and k denotes the Defendant.

23.   I have been provided with information from the State sufficient to calculate AA_{jk} by claim. While I received from Defendants a variety of data sets summarizing (to varying degrees of completeness) invoice information, rebates information and other accounting information, I have not received from Defendants sufficient explanation and clarification of these data to accurately calculate the ASP_{jk} by NDC and/or J-Code for most drugs and most Defendants in this matter. Indeed, the data that I have been able to use to analyze liability using ASPs have been developed as part of the MDL AWP litigation addressing the Track 1 Defendants and the Connecticut AWP litigation.

Given this limited ability to make use of discovery materials, I have developed a method to make use of the existing information to draw conclusions regarding liability. Specifically,

   a) For claims for reimbursement for single-source self-administered drugs, I conclude liability as follows:

   • For those NDCs for which I have ASPs and for which AA > ASP = EAC, I conclude that AA fraudulently exceeds EAC.

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[25] As currently implemented, my methodology focuses upon accurately calculating the total number of claims that were deceptive and false. However, it is possible that I can identify those claims submitted by elderly residents. If I were able to distinguish those claims submitted by elderly residents, I understand that an additional penalty of $10,000 per claim could be imposed. Should I be asked to do so, I could submit such calculations in a supplemental analysis. Should I receive any supplementary direction from the Court regarding the amount of the penalty to be assessed per false and deceptive claim, the calculation of aggregate penalties will be very easy to revise to accommodate those alternative directions. The revised calculation is simple arithmetic.

E. Analysis of Medicaid Rebates

33.   I have not received data on Medicaid rebates paid to the State. According to the CMS Medicaid Drug Rebate Program, Medicaid rebates are to be calculated as a fixed percentage of AMP ("Average Manufacturer Price"),[35] which purports to approximate the ASP. For the purposes of the overcharge damage analysis, I assume that AMP is the same in the actual and but-for worlds (since ASP is the same), and therefore the total amount of rebates received by the state is the same in the actual and but-for worlds. As a result, if properly paid in the actual world, Medicaid rebates net out of the damage calculation.[36] However, if rebates were not paid in the actual world, overcharge damages incurred by the State are higher than those calculated here.[37]

IV.   The Calculation of Damages and Recovery of Penalties for False Claims and Deceptive Practices

34.   Tables 1-3 summarize the calculations of overcharge damages and the measures of recovery for false claims and deceptive practices, making use of the methodologies presented above.[38]

    a) Table 1 presents selected overcharge damages by Defendant and by Drug, for each of the *Complaints*, when the reimbursement claims provided by Nevada are drug claims reported by NDCs. Recall that almost no information was available to me to calculate aggregate overcharge damages. As a result, the sum of overcharge damages in Table 1 is useful for illustration rather than as a basis for recovery for economic injury.

    b) Table 2 summarizes my analysis of claims data for single-source self-administered drugs. It presents information regarding the total number of claims for such drugs by Defendant for each of the *Complaints*; it tabulates those claims

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[35] See http://www.cms.hhs.gov/MedicaidDrugRebateProgram; rebates for innovator drugs are set at 15.1% of AMP; and rebates for non-innovator drugs are set at 11% of AMP.

[36] State reimbursements for Medicaid should net out rebate payments. Specifically, Actual Net Reimbursements = Actual Reimbursements – Actual Rebates. Likewise, But-For Net Reimbursements = But-For Reimbursements – But-For Rebates. Therefore, Overcharge Damages = Actual Net Reimbursements – But-For Reimbursements = (Actual Reimbursements – Actual Rebates) – (But-For Reimbursements – But-For Rebates). However, since ASP and AMP are the same in both the but-for and actual worlds, Actual Rebates = But-For Rebates, and Overcharge Damages = Actual Reimbursements – But-For Reimbursements (as in Equation (1c)).

[37] Using the notation in the preceding footnote, Overcharge Damages = Actual Net Reimbursements – But-For Reimbursements = (Actual Reimbursements – Actual Rebates) – (But-For Reimbursements – But-For Rebates). When rebates are paid in the actual world and by reasonable assumption are the same in the but-for world, the rebates net out of the damage calculation, as above. If however, Actual Rebates = $0 when Actual Rebates should = But-For Rebates > 0, then Corrected Overcharge Damages = (Actual Reimbursements – 0.00) – (But-For Reimbursements – But-For Rebates) = (Actual Reimbursements – But-For Reimbursements) + **But-For Rebates** > my calculated Overcharge Damages = Actual Reimbursements – But-For Reimbursements.

[38] Note that none of these calculations take account of pre-judgment interest. They are therefore conservative.

EXHIBIT 5

Calculation of Damages and Penalties for the State of Montana

Declaration of Raymond S. Hartman

I.   Introduction and Overview

1.   My name is Raymond S. Hartman. I am Director and President of Greylock McKinnon Associates (GMA), an economic consulting and litigation support firm located in Cambridge, Massachusetts. Since I have previously described my qualifications to this Court, I will not repeat them here.

2.   I have been asked by Counsel to the State of Montana to review the Complaint in this matter;[1] to review the allegations regarding fraudulent pricing practices on the part of Defendants; and to describe the formulaic methodologies I would use to calculate both the damages to the State and its consumers if the alleged fraudulent pricing practices are proved and the penalties to the Defendants arising from those fraudulent practices.

3.   The fraudulent pricing practices specifically alleged of twenty-one Defendant drug manufacturers[2] are characterized as the "AWP Inflation Scheme."[3] Through the alleged "AWP Inflation Scheme" (or "AWP Scheme"), Defendant manufacturers fraudulently increased the AWPs of selected drugs (denoted by NDCs) above the provider acquisition costs (ACs) for which the AWPs were a market signal.[4] Defendants reported the inflated AWPs to the standard national price compendia (*First DataBank (FDB), Red Book* and *Blue Book*), and the industry based reimbursement amounts on those AWPs. Since providers acquired the drugs at acquisition cost (AC) while payors (Medicare, Medicaid, private Third-Party Payers (TPPs), and consumers) paid for the drugs at reimbursement rates based on the AWPs, the increased "spreads" (AWP – AC) caused by the AWP Scheme increased the profits earned by the providers of the drugs (pharmacies, physicians) at the expense of the payors. The increased profits induced providers to move market share of the relevant drugs, the *raison d'etre* of the AWP Scheme to the drug manufacturers.[5]

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[1] State of Montana's Second Amended Complaint, *In Re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456, United States District Court for the District of Massachusetts, August 1, 2003 (hereafter, *Complaint*).

[2] Identified and discussed in detail in the *Complaint* in ¶¶ 214-602. I have been instructed by Counsel to exclude the GSK Group from my analysis.

[3] *Complaint*, ¶¶ 5-10.

[4] Market reliance upon reported AWPs is discussed in ¶¶ 169-172 of the *Complaint*.

[5] A more complete discussion of the fraud and its market effects are developed in ¶¶ 173-213 of the *Complaint*.

Reimbursements$_{jk}$ for all relevant drugs and Defendant manufacturers, for the relevant Damage Period, for Medicaid and Medicare program reimbursements. The But-For Reimbursements are determined by statute.

D. Calculation of Penalties for Deceptive Practices and False Claims Under the AWP Inflation Scheme

18.   Under Count II (¶¶ 662-667) of the *Complaint,* the claim is made for restitution of losses suffered by the State of Montana as a result of the AWP Scheme. Defendants conduct as alleged constitutes deceptive acts or practices in violation of Mont. Code Ann. § 30-14-103 for those transactions in which the AWP was inflated; and for which Defendant manufacturer failed to disclose material facts that the AWP exceeded the average of the wholesale price based upon a good faith and reasonable estimate; and that the Defendant manufacturer knowingly made false representations by representing that the AWP was an accurate reflection of the average wholesale price. Pursuant to Mont. Code Ann. § 30-14-142(2), the *Complaint* states that the Court can assess civil penalties of $1,000 from each defendant for each willful violation of Mont. Code Ann. § 30-14-103.

19.   Under Count IV (¶¶ 682-691) of the *Complaint*, a claim for forfeiture, civil penalties, double damages and legal cost pursuant to Mont. Code Ann. § 17-8-231 is made in ¶ 691. Accordingly, it is claimed (¶ 691.C) each defendant must forfeit the entirety of their claims and pay (i) civil penalties of $2,000 per false claim, (ii) double the damages sustained by the State as a result of the false claim, and (iii) the State's legal costs incurred in connection with this action.

20.   I have been directed by Counsel to assume that penalties of $3,000 can be assessed for each claim submitted for reimbursement under Medicaid and Medicare that was subject to a deceptive practice and was false.[23] The number of such claims can be calculated as follows.

21.   As noted in ¶ 8 above, the allowed amount (AA) under Medicaid is to be the lesser of {the EAC, the Federal Upper Limit (FUL), the state maximum allowable cost (MAC), the Usual & Customary amount (U&C) charged by a pharmacy, or the amount billed}. Likewise, as noted in ¶ 8 above, EAC is invariably the lowest price.

Hence, for any drug reimbursed under Medicaid, I have been instructed by Counsel that liability occurs as a matter of law if $AA_{jk} > EAC_{jk}$. Furthermore, as discussed above (see footnote 8), $EAC_{jk} = ASP_{jk}$ to the relevant group of providers (pharmacies, physicians). For self-administered drugs reimbursed under Medicaid, j denotes the NDC of the drug and k denotes the Defendant. For physician-administered drugs, j denotes the NDC or the J-Code and k denotes the Defendant.

22.   I have been provided with information from the State sufficient to calculate AA_{jk} by claim, net of the dispensing fee. While I received from Defendants a variety of data

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[23] My methodology focuses upon accurately calculating the number of complaints that were deceptive and false. Should I receive alternative direction from the Court regarding the amount of the penalty to be assessed per false and deceptive claim, the calculation of aggregate penalties will be very easy to revise to accommodate those alternative directions. The revised calculation is simple arithmetic.

drug. I did not have sufficient time to identify the allowed amount AA_i for the drug alone on these claims, in order to calculate overcharges and penalties. For this reason, I do not compare a claimed amount to the AWP of the drug (by J-Code), in order to identify the number of false claims. Likewise, I do not calculate damages or penalties for this group of claims. Hence, my calculation of aggregate overcharge damages and my measures of penalties for false and deceptive claims are conservative.

C. Reimbursement for Drug Claims and Medical Claims For State Employees and State Agencies

30. The drugs for which reimbursement was paid based upon AWP by these groups will likewise be categorized as self-administered branded drugs, self-administered generic drugs or physician-administered drugs. Calculation of overcharge damages and the penalties for false and deceptive claims would proceed as above, if I had been provided with claims data for these groups. I was not, and do not therefore calculate overcharge damages or identify the number of false and deceptive claims subject to recovery of penalties. Hence, my calculation of aggregate overcharge damages and my measures of penalties for false and deceptive claims are conservative.

D. Reimbursement for Drug Payments Made by Uninsured Consumers

31. The price of drugs to walk-in customers without insurance is understood to be $U\&C \approx AWP$. Such consumers have been overcharged by the AWP Scheme. I have no data summarizing these reimbursements; hence, I cannot calculate the related damages or penalties. Hence, my calculation of aggregate overcharge damages and my measures of penalties for false and deceptive claims are conservative.

E. Analysis of Medicaid Rebates

32. I have not received complete data on Medicaid rebates paid to the State. According to the CMS Medicaid Drug Rebate Program, Medicaid rebates are to be calculated as a fixed percentage of AMP ("Average Manufacturer Price"),[34] which purports to approximate the ASP. For the purposes of the overcharge damage analysis, I assume that AMP is the same in the actual and but-for worlds (since ASP is the same), and therefore the total amount of rebates received by the state is the same in the actual and but-for worlds. As a result, if properly paid in the actual world, Medicaid rebates net

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[34] See http://www.cms.hhs.gov/MedicaidDrugRebateProgram; rebates for innovator drugs are set at 15.1% of AMP; and rebates for non-innovator drugs are set at 11% of AMP.

out of the damage calculation.[35] However, if rebates were not paid in the actual world, overcharge damages incurred by the State are higher than those calculated here.[36]

IV.   The Calculation of Damages and Recovery of Penalties for False Claims and Deceptive Practices

33.   Tables 1-6 summarize the calculations of overcharge damages and the measures of recovery for false claims and deceptive practices, making use of the methodologies presented above.[37]

a) Table 1 presents selected overcharge damages by Defendant and by Drug, when the reimbursement claims provided by Montana are drug claims based upon NDCs.   Recall that almost no information was available to me to calculate aggregate overcharge damages.   As a result, the sum of overcharge damages in Table 1 is useful for illustration rather than as a basis for recovery for economic injury.

b) Table 2 presents selected overcharge damages by Defendant and by Drug, when the reimbursement claims provided by Montana are medical claims that include reimbursement for drugs by J-Code and provision of physician services by CPT-Code.   As with Table 1, almost no information was available to me to calculate aggregate overcharge damages by J-Code, and this sum of overcharge damages is useful for illustration only rather than as a basis for recovery for economic injury.

c) Table 3 summarizes my analysis of claims data for single-source self-administered drugs.   It presents information regarding the total number of claims for such drugs by Defendant; it tabulates those claims that can be identified as false or deceptive by comparison of the claimed amount (AA) with drugs' ASPs and those identified on the basis of the threshold amounts related to the drugs' AWP.   I have allowed for two thresholds: AA > AWP – 16.6% and AA > AWP –

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[35] State reimbursements for Medicaid should net out rebate payments. Specifically, Actual Net Reimbursements = Actual Reimbursements – Actual Rebates. Likewise, But-For Net Reimbursements = But-For Reimbursements -- But-For Rebates. Therefore, Overcharge Damages = Actual Net Reimbursements – But-For Reimbursements = (Actual Reimbursements – Actual Rebates) – (But-For Reimbursements – But-For Rebates). However, since ASP and AMP are the same in both the but-for and actual worlds, Actual Rebates = But-For Rebates, and Overcharge Damages = Actual Reimbursements – But-For Reimbursements (as in Equation (1c)).

[36] Using the notation in the preceding footnote, Overcharge Damages = Actual Net Reimbursements – But-For Reimbursements = (Actual Reimbursements – Actual Rebates) – (But-For Reimbursements – But-For Rebates). When rebates are paid in the actual world and by reasonable assumption are the same in the but-for world, the rebates net out of the damage calculation, as above. If however, Actual Rebates = $0 when Actual Rebates should = But-For Rebates > 0, then Corrected Overcharge Damages = (Actual Reimbursements – 0.00) – (But-For Reimbursements – But-For Rebates) = (Actual Reimbursements – But-For Reimbursements) + **But-For Rebates** > my calculated Overcharge Damages = Actual Reimbursements -- But-For Reimbursements.

[37] Note that none of these calculations take account of pre-judgment interest.   They are therefore conservative.

Table 1: Calculation of Overcharge Damages for Selected Drugs Reimbursed Based on NDCs

Defendant	Drug	Total by Drug
Johnson & Johnson	Procrit	49,464
Johnson & Johnson	Remicade	16,384
Johnson & Johnson Total		$65,848

Table 2: Calculation of Overcharge Damages for Selected Drugs Reimbursed Based on J-Codes

Manufacturer	Drug	J-Code	Total by Drug
Johnson & Johnson Group	REMICADE	J1745	$8,928
Johnson & Johnson Group	PROCRIT	Q0136	$23,350

Table 6: Summary of Overcharge Damages and Penalties by Defendant and Total

	All Overcharges [1]	Penalties - Based on Yardstick Threshold Bounds [2]	
		Lower Bound	Upper Bound
Johnson & Johnson	$98,126	$755,898,000	$945,273,000

EXHIBIT 6

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION)	MDL NO. 1456 Civil Action No. 01-12257-PBS
THIS DOCUMENT RELATES TO) TRIAL OF CLASS 2 AND) CLASS 3 CLAIMS)	Hon. Patti B. Saris

TRIAL DECLARATION OF JAYSON S. DUKES

I.   QUALIFICATIONS AND COMPENSATION

1. I am a Managing Director in the Forensic and Litigation Consulting Practice of FTI Consulting ("FTI"). FTI is a multi-disciplinary consulting firm with practices in financial restructuring, forensic and litigation consulting, and economic consulting.

2. I am a Certified Public Accountant and I received a Bachelor's Degree in Accounting from the University of Georgia.

3. I have assisted in resolving disputes across a wide variety of industries for nearly 15 years. I have advised healthcare providers, pharmaceutical companies, and other life sciences clients on financial, accounting, and economic matters. My current clients include Bristol-Myers Squibb, Wyeth, Johnson & Johnson, and HCA.

4. I have particular expertise in the analysis of pharmaceutical pricing practices, including rebating, discounting, and other commonly used financial incentives. My curriculum vitae is annexed to this Declaration as DX 2784A.

5. While I have directed all of the work connected with this engagement, I have been assisted by several other FTI employees.

6. FTI's fees for this engagement are based upon time expended and expenses incurred. My billing rate is $424 per hour. The rates charged by the other FTI employees who have assisted me in this engagement range from $195 per hour to $495 per hour.

II.   SCOPE OF ASSIGNMENT

7. FTI was retained by Patterson, Belknap, Webb & Tyler LLP, attorneys for the Johnson & Johnson Defendants, to perform data analyses and financial calculations relating to Procrit®, a product sold by Ortho Biotech Products, L.P., and Remicade, a product sold by Centocor, Inc.

A.   Initial Assignment

8. FTI was asked to calculate the average selling price ("ASP") for Procrit and Remicade, based on units sold at each price point, by product National Drug Code ("NDC"), by year. We were asked to calculate ASPs excluding the same classes of trade purportedly excluded by plaintiffs' expert, Dr. Raymond S. Hartman, as described in his reports dated December 15, 2005 and February 3, 2006.[1]

9. Based on these ASP calculations, FTI was asked to calculate the "spreads" between

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[1] The methodologies used by Dr. Hartman and FTI to calculate ASPs for purposes of this litigation differ from the methodology that CMS requires manufacturers to use to calculate the ASPs that they submit pursuant to the Medicare Modernization Act.

the above-described ASPs and the published AWPs for Procrit and Remicade, again using Dr. Hartman's methodologies for calculating the "spread".

B.   Subsequent Assignment

10. Dr. Hartman submitted his Direct Testimony in this case on November 1, 2006. Dr. Hartman's Direct Testimony includes revised ASP and "spread" calculations that differ from those within his reports dated December 15, 2005 and February 3, 2006. FTI was asked to examine and comment on Dr. Hartman's revised calculations.

III.   SUMMARY OF PRIOR REPORTS AND OPINIONS

11. Dr. Hartman's theory of liability is based on the size of the "spread" between a drug's ASP and its AWP. In order to determine liability, Dr. Hartman proposed a definition of ASP, and then attempted to calculate ASPs in accordance with his definition. He then determined the difference between the ASP and the AWP, to determine the size of the "spread." Finally, he expressed the "spread" as a percentage, calculated as the difference between the ASP and the AWP, divided by the ASP.

12. In order for Dr. Hartman's "spread" calculations to be reflect a true average, he must correctly calculate the drug's ASP, and he must determine the difference between that ASP and the correct AWP. If either the ASP or the AWP is incorrect, the resulting "spread" will also be incorrect.

13. My review of the ASP and "spread" calculations in Dr. Hartman's December 15, 2005 and February 3, 2006 reports uncovered numerous calculation errors resulting from Dr. Hartman's failure to correctly apply his intended methodology. That methodology required him to comprehensively identify and remove from his calculations all sales transactions pertaining to units of Procrit and Remicade distributed to hospitals, managed care entities, and the government. As a result of these and other errors, many of Dr. Hartman's original calculations understated the ASPs for Procrit and Remicade, and therefore overstated the size of their "spreads."

14. Specifically, in his December 15, 2005 report, Dr. Hartman examined 116 Procrit NDCs during the period 1991 to 2003, and concluded that the "spread" on 16 Procrit NDCs exceeded 30% in particular years. He also concluded that the "spread" on Remicade exceeded 30% in each year from 1998 to 2003.

15. I submitted a responsive report in which I pointed out numerous errors in Dr. Hartman's December 15, 2005 calculations and observations, which resulted in inaccurate reporting of "spreads" for Procrit and Remicade.[2]

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[2] See Number 30 and Number 32 within Declaration of Jayson S. Dukes in Support of the Johnson & Johnson Defendants' Motion for Summary Judgment as to Class 1 and Class 2 (Corrected) (May 8, 2006), detailing errors in Dr. Hartman's ASP and "spread" calculations.

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IV.   COMMENTS ON DR. HARTMAN'S DIRECT TESTIMONY

16. As part of his Direct Testimony dated November 1, 2006, Dr. Hartman revised his ASP and "spread" calculations for Procrit and Remicade. These revised calculations differ from the calculations in his reports dated December 15, 2005 and February 3, 2006.[3]

A.   Dr. Hartman's Revised Procrit Calculations

17. Based on his revised ASP and "spread" calculations for Procrit, Dr. Hartman has now concluded that none of the "spreads" on any of Procrit's NDCs ever exceeded 30%.[4] While I have not reviewed Dr. Hartman's revised Procrit calculations in detail, they appear generally consistent with my calculations.

18. Based on his revised ASP and "spread" calculations, Dr. Hartman finds no liability or damages for Procrit for Class 3.[5]

19. Dr. Hartman finds liability and damages for Procrit for Class 2 based on a legal theory that Medicare and Massachusetts law required a "spread" of "zero." Inasmuch as this is a legal theory, I am unable to comment further.

B.   Dr. Hartman's Revised Remicade Calculations

20. I was advised by Centocor that during the period at issue in this case, Centocor did not extend discounts or rebates to physicians for purchases of Remicade. Nevertheless, in his December 15, 2005 report, Dr. Hartman calculated the following ASPs and "spreads" on Remicade:

Remicade "ASPs" Per Hartman Dec. 2005 Report					
1998	1999	2000	2001	2002	2003
$447.26	$458.23	$486.17	$508.25	$516.65	$514.98

Remicade "Spreads" Per Hartman Dec. 2005 Report					
1998	1999	2000	2001	2002	2003
30.8%	33.4%	31.9%	36.1%	33.9%	34.3%

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[3] See Direct Testimony of Raymond S. Hartman (Nov. 1, 2006) ("Hartman Direct") at Attachment G.3.a ("Johnson & Johnson Annual Average Sales Price") and Attachment G.3.c ("Johnson & Johnson Annual Spreads").

[4] See Hartman Direct at Attachment G.3.c (Johnson & Johnson Annual Spreads").

[5] See Hartman Direct at Attachment I.3 ("Johnson & Johnson Drugs Subject to Liability") and Attachment J.3.a ("Summary of Johnson & Johnson Massachusetts Damages by Class and By Drug").

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21. In his November 1, 2006 Direct Testimony, Dr. Hartman revised his ASP and "spread" calculations for Remicade as follows[6]:

Revised Remicade "ASPs" Per Hartman Nov. 2006 Testimony					
1998	1999	2000	2001	2002	2003
$450.68	$462.77	$499.15	$524.32	$532.24	$532.18

Revised Remicade "Spreads" Per Hartman Nov. 2006 Testimony					
1998	1999	2000	2001	2002	2003
29.8%	32.1%	28.5%	31.9%	29.9%	30.0%

C.   Dr. Hartman's Revised "Spread" Calculations Used the Wrong AWPs

22. As discussed below, Dr. Hartman's revised calculations of Remicade's "spreads" in 1999 and 2001 are incorrect because he used the wrong AWPs. Correcting for this error, I conclude that the Remicade "spreads" in 1999 and 2001 were less than 30%.

23. As noted above, in order to accurately calculate the "spread" in a given year, Dr. Hartman must accurately calculate the ASP and must also select the appropriate AWP, since the "spread" is simply the difference between the ASP and the AWP. In calculating the "spreads" for Remicade, Dr. Hartman used the following AWPs[7]:

Remicade "AWPs" Per Hartman Nov. 2006 Testimony					
1998	1999	2000	2001	2002	2003
$585.00	$611.33	$641.28	$691.61	$691.61	$691.61

24. Selecting the right AWP to use in the "spread" calculation is seemingly non-controversial given that AWPs are published. Indeed, in a year where the AWP does not change, there would only be one AWP to choose from. That was the case in three out of four years in which Dr. Hartman concludes that Remicade's "spread" was at/less than 30% (i.e., in 1998, 2002, and 2003).

25. However, that was not the case in either of the two years in which Dr. Hartman concludes that Remicade's "spread" was greater than 30% (i.e., in 1999 and 2001). In those years, Remicade's list price and AWP changed during the year, because Centocor increased the list price. Consequently, in each of those years, Dr. Hartman had to select which AWP, if either, to use in calculating Remicade's "spread."

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[6] See Hartman Direct at Attachment G.3.a ("Johnson & Johnson Annual Average Sales Price") and Attachment G.3.c ("Johnson & Johnson Annual Spreads").

[7] See Hartman Direct at Attachment G.3.b ("Johnson & Johnson Annual AWPs").

26. In 1999, Remicade's AWP was $585.00 for part of the year (from January 1, 1999 through June 17, 1999), and $611.33 during the rest of the year (from June 18, 1999 through December 31, 1999). In 2001, Remicade's AWP was $665.65 for part of the year (from January 1, 2001 through June 13, 2001), and $691.61 during the rest of the year (from June 14, 2001 through December 31, 2001). In performing his "spread" calculations, Dr. Hartman chose to use the AWPs in effect on June 30th during those years, (i.e., $611.33 in 1999, and $691.61 in 2001).[8]

27. Dr. Hartman's finding that Remicade's spread was 32.1% 1999 and 31.9% in 2001 is driven by his decision to compare his ASP figures to the AWPs in effect on June 30th, which were the higher of the two AWPs in effect during each of those years, as follows:[9]

	1999	2001
Higher AWP	$611.33	$691.61
ASP	$462.77	$524.32
Difference (% Spread)	$148.56 (32.1%)	$167.29 (31.9%)

28. Alternatively, instead of choosing the AWPs in effect on June 30th 1999 and 2001, Dr. Hartman should have based his calculations on a "weighted average" of the AWPs. Since Dr. Hartman's ASPs are based on units sold at each price point and he is in effect calculating a weighted average selling price, it is logical and appropriate that a weighted average ASP should be compared to a weighted average AWP. The effect on the "spreads" of using a weighted average AWP is illustrated in the following table:

	1999	2001
Weighted Average AWP	$598.47	$679.89
ASP	$462.77	$524.32
Difference (% Spread)	$135.70 (29.3%)	$155.57 (29.7%)

29. A table showing all Procrit and Remicade "spreads" from 1991 through 2003, based on a comparison of Dr. Hartman's November 1, 2006 ASPs with the weighted average AWPs FTI calculated, is attached as DX 2873.

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[8] According to Plaintiffs' counsel, Dr. Hartman picked whichever AWP was in effect as of June 30th. See Letter from Thomas M. Sobel to Andrew D. Schau (Nov. 7, 2006).
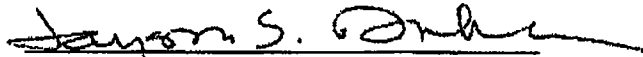
[9] Had he elected to compare his ASPs to the lower of the AWPs in effect during those years, he would have concluded that Remicade's spread was 26.4% in 1999 and 27.0% 2001.

D.   Remicade "Damages" Analysis

30. Based on his conclusion that the Remicade "spread" was 32.1% in 1999 and 31.9% in 2001, Dr. Hartman finds damages for Class 3 of $27,868 in 1999 and $208,923 in 2001[10]. Dr. Hartman does not find damages for Class 3 in 1998, 2000, 2002, and 2003.

31. Based on my conclusion that Remicade's "spreads" in 1999 and 2001 were less than 30%, I conclude, contrary to Dr. Hartman, that there is no liability or damages for Class 3 in 1999 and 2001, even assuming that Dr. Hartman's liability and damages theories are accepted.

32. Dr. Hartman finds liability and damages for Remicade for Class 2 in all years based on a legal theory that Medicare and Massachusetts law required a "zero" spread. Inasmuch as this is a legal theory, I am unable to comment further.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on ___11 | 16_____, 2006

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Jayson S. Dukes

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[10] See Hartman Direct at Attachment J.3.a ("Summary of Johnson & Johnson Massachusetts Damages by Class and by Drug").

Attachment 1

Curriculum Vitae

Name: Jayson S. Dukes

Addresses:

Business: FTI Consulting, Inc.
One Atlantic Center
1201 West Peachtree Street
Suite 500
Atlanta, Georgia 30309

Home: 755 East Morningside Drive
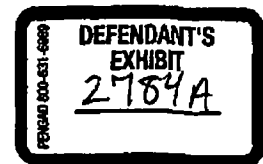Atlanta, Georgia 30324

Telephone: (404) 460-6221   (404) 873-3735

Birth: September 7, 1969
Laramie, Wyoming

Education: B.B.A. University Georgia, June 1991
Major in Accounting

Professional Certifications:

- Certified Public Accountant – 1996

Attachment 1

Relevant Work Experience

FTI Consulting, Inc.
Managing Director   **2005 - Present**
Director   **2003 - 2004**

Manage engagements occurring in the Atlanta Office of FTI's Dispute Advisory Services
Practice. This Practice regularly conducts Dispute Advisory Services and Investigative
Advisory Services.

KPMG, LLP
Director   **2002 – 2003**

Managed engagements occurring in the Atlanta Office of KPMG's Forensics Practice.
This Practice regularly conducts Dispute Advisory Services and Investigative Advisory
Services.

Arthur Andersen
Director   **1999 - 2002**
Manager   **1995 – 1999**
Sr. Consultant   **1993 – 1995**

Managed engagements occurring in the Atlanta and Los Angeles Offices of Arthur
Andersen's Value Solutions Practice. This Practice regularly conducted Legal
Consulting Services, Corporate Recovery Services and Bankruptcy Consulting Services.

Arthur Andersen
Staff Accountant   **1991 – 1993**

Performed audit, and management consulting services for clients including banks,
manufacturers, and not-for-profit organizations.

Annual Spread Calculations based on Hartman's Direct Testimony Dated November 1, 2006 and FTI's Weighted Average AWPs

NDC	Product	Description	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
00062740003	Procrit	PROCRIT 4000U/ML AMG	22.6%	23.7%	21.8%										
00062740103	Procrit	PROCRIT 10000U/ML AMG	22.8%	23.0%	22.8%										
00062740201	Procrit	PROCRIT 2000U/ML AMG	24.4%	24.8%	22.3%										
00062740501	Procrit	PROCRIT 3000U/ML AMG	21.0%	25.2%	21.4%										
59676030201	Procrit	PROCRIT 2000 U/ML 6'S				22.4%	21.6%	21.9%	21.5%	21.4%	22.8%	20.5%	22.2%	19.8%	17.6%
59676030202	Procrit	PROCRIT 2000 U/ML , INSTITUTIO			20.5%	21.4%	22.0%	25.2%		24.7%	22.7%	19.4%	25.3%	27.6%	21.8%
59676030301	Procrit	PROCRIT 3000 U/ML 6'S				22.7%	22.1%	22.1%	21.7%	21.5%	22.5%	21.2%	22.7%	20.5%	18.6%
59676030302	Procrit	PROCRIT 3000 U/ML 25'S			21.5%	22.5%	23.4%	24.4%		23.6%	22.1%	19.7%	24.1%	24.6%	20.8%
59676030401	Procrit	PROCRIT 4000 U/ML 6'S				22.7%	21.6%	21.7%	21.2%	21.0%	22.2%	21.3%	22.7%	20.9%	19.1%
59676030402	Procrit	PROCRIT 4000 U/ML 25'S			23.8%	23.4%	24.2%	25.3%		23.0%	22.6%	19.8%	24.1%	21.1%	21.1%
59676031001	Procrit	PROCRIT 10000 U/ML 6'S			22.8%	22.5%	21.8%	22.1%	22.2%	21.5%	23.2%	22.0%	23.3%	21.4%	20.7%
59676031002	Procrit	PROCRIT 10000 U/ML 25'S			24.4%	22.4%	22.3%	24.2%		25.6%	25.5%	23.0%	26.8%	23.5%	24.4%
59676031201	Procrit	PROCRIT 10,000 U/ML , MULTIDOS					20.5%	23.4%	26.4%	24.9%	25.0%	22.7%	25.8%	23.7%	24.3%
59676032001	Procrit	PROCRIT 20,000 U/ML - 1ML							23.4%	25.0%	25.6%	25.7%	27.3%	25.6%	26.0%
59676034001	Procrit	PROCRIT 40000 U/ML 4'S									24.4%	25.3%	27.2%	25.5%	26.0%
57894003001	Remicade	C168J REMICADE 1PCK US PD								29.8%	29.3%	28.5%	29.7%	29.9%	30.0%
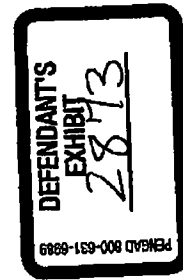
EXHIBIT 7

11587094

Calculation of Damages and Penalties for the State of Nevada

**Supplementary Declaration of
Raymond S. Hartman**

I.   Introduction and Overview

1.   My name is Raymond S. Hartman.

2.   As stated in my June 13, 2006 Declaration (at ¶ 37), my calculation of overcharge damages and penalties for the State of Nevada was based upon Nevada Medicaid claims data, which I had understood were net of the dispensing fee related to each claim. Several hours prior to serving that Declaration, I was informed that the Nevada Medicaid claims data were not net of the related dispensing fee. I have since recalculated and reanalyzed the Nevada Medicaid claims data, incorporating a correction for the dispensing fee. The results of this recalculation and reanalysis are found in Tables 1 through 5 of this Supplementary Declaration.

II.   The Recalculation of Damages and Recovery of Penalties for False Claims and Deceptive Practices

3.   Tables 1-3 summarize my recalculations of overcharge damages and the measures of recovery for false claims and deceptive practices, making use of the same methodologies presented in my June 13, 2006 Declaration.

   a) Table 1 presents selected recalculated overcharge damages, subject to the same caveats found in that Declaration.

   b) Table 2 summarizes my reanalysis of claims data for single-source self-administered drugs, for the same two thresholds: AA > AWP – 16.6% and AA > AWP – 20%.

   c) Table 3 summarizes my reanalysis of claims data for multi-source self-administered drugs, for the same two thresholds: AWP – 20% and AWP – 66%.

4.   To summarize the results of these Tables, I find (and where appropriate report in Table 4):

   a) The measure of aggregate overcharge damages in Table 1 is $897,139.

   b) The number of claims that are false and subject to deceptive trade practices is substantial under widely different bounds for reasonable thresholds of calculating the EAC relative to the reported AWP.

   • In Table 2, the total number of such claims for single-source self-administered drugs ranges from 5 (for Watson) to 343,476 (for Pfizer) across Defendants. Since the penalty for deceptive and false practices is $7,500 in total, the amount of the recovery for that penalty is substantial, ranging from $37,500 (for Watson) to $2.6 billion (for Pfizer) across Defendants. The number of false and deceptive claims based upon the AWP thresholds and summed over

Table 1: Calculation of Overcharge Damages for Selected Drugs Reimbursed Based on NDCs

State Complaint

Defendant	Drug	Total by Drug
Johnson & Johnson Group	PROCRIT	35,053
	REMICADE	0
Johnson & Johnson Group Total		$35,053

Table 4: Summary of Overcharge Damages and Penalties by Defendant and Total

State Complaint	All Overcharges[1]	Penalties - Based on Yardstick Threshold Bounds[2]	
		Lower Bound	Upper Bound
Johnson & Johnson	$35,053	$1,620,112,500	$1,669,485,000